Supreme Court, U.S.
FILED

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No._____

IN THE

Supreme Court of the United States

Terri Pedroza
Petitioner,
-V-

Cintas Corporation; the United States District Court of the Western District of Missouri Southern Division; the United States Court of Appeals for the Eighth Circuit; and O'Reilly and Jensen L.L.C.
Respondents.

On petition for Writ of Certiorari to the United States Court

of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Terri Pedroza

P.O. Box 8864

Springfield, MO 65801-8864

(417)-532-2301

QUESTIONS PRESENTED

1. Were the lower courts in error, under Section 703 (a)(1) of the Title VII, to dismiss the petitioner's sexual harassment claim? This states that any unwelcomed sexual behavior that creates a hostile work environment, discriminatory intimidation, and ridicule would be catagorized as sexual harassment. It also states that verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

2. Was it an error for the lower courts to overlook and dismiss statements made by key witnesses in the petitioner's original case? There were many witnesses to the harassment, including coworkers and supervisors, however, the courts chose to dismiss this evidence.

3. Were the lower courts in error under Title VII section V (C)(3), when they overlooked the fact that Cintas corporation

QUESTIONS PRESENTED–CONT.

did not reasonably execute their duties required by the EEOC to investigate any and all claims of sexual harassment? Although the petitioner made several complaints, most of them were ignored or not taken seriously.

4. Was it a breech of contract for the petitioner's legal representation to ignore her requests; and make important decisions without informing her first? The petitioner's lawyer did not appeal on any motions to dismiss any evidence or file a complaint with the state of Missouri even though the petitioner requested these things. Another example is that in her brief opposing summary judgment, her representation chose to abandon her religious discrimination claim, however the petitioner never approved this.

5. Was it an error, under 28 U.S.C. §1291, for the lower courts to allow Judge Dorr and Eric Jensen to work the same case, even though they were former associates?

LIST OF PARTIES

(√) All parties appear in the caption of the cover page.

Petitioner below:

Terri Pedroza

Respondents below:

Cintas Corporation; The United States District Court of the Western District of Missouri Southern Division; The United States Court of Appeals for the Eighth Circuit; and O'Reilly and Jensen L.L.C.

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OTHER

Plaintiff Terri Pedroza brought a complaint against Defendant Cintas Corporation for violation of her employment rights pursuant to 42 U.S.C. § 2000e et seq. (Title VII) and Missouri Human Rights Act ("MHRA") RSMO. 213.010

Jurisdiction and venue were proper in the United States District Court for the Western District of Missouri pursuant to Title 28 U.S.C. § 1331; 28 U.S.C. § 1367; and 28 U.S.C. §1391, because a federal question was involved and the acts complained of occurred within the judicial district.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

The petitioner respectfully prays that the court issue a writ of Certiorari to review a judgement of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

[√] For cases from **federal courts:**

The opinion of the United States Court of Appeals appears at Appendix _A_ to the petition and is

[ ] reported at ____ or,

[ ] has been designated for publication but is not yet reported; or

[ ] is unpublished.

JURISDICTION

[√] For cases from **federal courts**:

The court of appeals opinion and judgement issued on January 9, 2003. An extension of time to file the petition for a writ of certiorari was granted to and including August 29, 2005. On June 9, 2005 in Application No. 04A1036. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS STATUTES INVOLVED IN THE CASE

In pertinent part, U.S. const. amend. XIV provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of

> citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without the process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In pertinent part, Title 29 U.S.C. §215 (a)(3) (2004) provides:

> [to] discharge or in any other manner discriminate against my employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings, or has served or is about to serve on an industry committee.

In pertinent part, Title 42 U.S.C. §1983 provides:

> Every person who, under color of any statutes, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights,

privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redness, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

In pertinent part, Title 42 U.S.C. §1981 (a) (2005) provides:

(1) Civil Rights

In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–5, 2000e–16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its

disparate impact) prohibited under section 703, 704, or 717 of the Act [42 U.S.C. 2000e–2, 2000e–3, 2000e–16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

In pertinent part, Title 42 U.S.C. § 1981 (b) (2005) provides:

(b) Compensatory and punitive damages

(1) Determination of punitive damages

A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or

discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

(2) Exclusions from compensatory damages

Compensatory damages awarded under this section shall not include back pay, interest on back pay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964 [42 U.S.C. 2000e–5 (g)].

(3) Limitations

The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party----

(A) in the case of a respondent who has more than

14employees and fewer than 101 employees in each of 20 or more calendar weeks in the current or proceeding calendar year, $50,000;

(B) in the case of a respondent who has more than 100 employees and fewer than 201 employees in each of 20 or more calendar weeks in the current or proceeding calendar year, $100,000; and

(C) in the case of a respondent who has more than 200 employees and fewer than 501 employees in each of 20 or more calendar weeks in the current or proceeding calendar year, $200,000; and

(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or proceeding calendar year, $300,000.

In pertinent part, Title 28 U.S.C. § 1443 (2005) provides:

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the

United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

STATEMENT OF THE CASE

On May 24, 2001, Petitioner Terri Pedroza filed her complaint against Defendant Cintas, alleging that another female employee sexually harassed her. This of course would be a direct violation of Title VII of the Civil Rights Act of 1964. Although Pedroza repeatedly complained to management

personnel, Cintas did nothing to stop the continued harassment. Even though Cintas was provided with numerous examples of the proper ways to conduct an investigation by the EEOC, they chose to exercise unreasonable care to prevent and promptly correct the harassment. The petitioner felt that her work performance was affected and was in an intimidating, hostile, and offensive work environment. Although Cintas prepared records of communication that were placed in Straw's[1] personal file, the harassment continued, therefore the petitioner felt that further actions needed to be taken. Pedroza waited approximately four to five months for Cintas to take the *appropriate* actions, however, that never happened. Instead, Pedroza was repeatedly told by her superiors that "it was her (Straw) personality," that things were blown "out of proportion," that she needed to be more "open minded" to other

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[1]Pam Straw was the coworker who allegedly sexually harassed the petitioner.

people's *lifestyles*," and at one point "we're tired of the friction.[2]" Ultimately, petitioner Pedroza was forced to resign due to the stress of the continual sexually harassing behavior and the continued inaction of Cintas to take corrective measures.

On November 13, 2000, Pedroza timely filed her charge of employment discrimination with the Equal Employment Opportunity Commission, ("EEOC"), and the Missouri Commission on Human Rights, ("MCHR"). The petitioner received her "Right to Sue" letter on or about March 30, 2001, and timely filed her action in the district court.

A trial was scheduled for January 21, 2003. Pedroza felt that her attorney did not fulfill his duties during this time. He repeatedly ignored her questions, inquiries, and requests about the case. He also made decisions[3] that she was not informed of

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[2]This statement was made on August 30, 2000, by Cliff Smith, the General Manager at the Springfield Cintas facility, during a meeting between himself and Pedroza.

[3]Pedroza's claim of religious discrimination was abandoned even though she never made that decision; and she was unaware that this was ever an agreement.

until opinions of the court were reported. Pedroza was also made aware of the fact that her attorney and United States District Judge Richard E. Dorr, were former associates. The petitioner felt that this would be catagorized as conflict of interests, and therefore should have been addressed. On January 10, 2003, the district court ultimately granted the Defendant's Motion for Summary Judgement and entered judgement against Pedroza.

REASONS FOR GRANTING THE PETITION

The lower courts erroneously compared female to female sexual harassment with male to male sexual harassment in assessing whether Pam Straw's conduct toward petitioner Terri Pedroza was "because of sex." Concluding that Straw's behavior did not measure up to the cases of male to male harassment in which other courts found summary judgment appropriate, the lower courts disposed of Pedroza's claims and improperly granted summary judgment to defendant Cintas.

> "In order to establish a claim of hostile work environment sexual harassment by non-supervisory coworkers, a plaintiff must establish that (a) she belongs to a protected group; (b) she was subject to unwelcome sexual harassment; (c) the harassment was based on sex; (d)the harassment affected a term, condition, or privilege of employment; and (e) the employer knew or should have known of the harassment and failed to take proper remedial action." Scusa v. Nestle U.S.A. Co., Inc., 181 F.3d 965 (8th Cir. 1999).

In ruling that same-sex harassment was actionable under Title VII, the United States Supreme Court suggested three ways that a same-sex harassment victim may satisfy the third element above (that the harassment be "based on sex"): (1)providing "credible evidence" that the harasser was homosexual; (2)showing that the harasser was motivated by a general hostility toward members of the same gender; or (3)presenting direct comparative evidence about how the alleged

harasser treated members of both sexes in mixed sex workplace. Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 80-81, 118 S. Ct. 998, 1002, 140 L.Ed.2d 201 (1998).

Other courts have NOT interpreted the above list to be the ONLY methods that a plaintiff may use to prove same-sex harassment is "based on sex": "[W]e discern nothing in the Supreme Court's Oncale decision indicating that the examples it provided were meant to be exhaustive rather than instructive." Shepherd v. Slater Steels Corp., 168 F.3d 998, 1009 (7th Cir. 1999).

The lower courts analyzed Pedroza's complaints of sexual harassment under the first method of proof suggested by Oncale: whether Pedroza had presented "credible evidence" that Straw was a homosexual. The courts ultimately concluded that Pedroza had not shown that the actions were sexual in nature, or that Straw was a lesbian. In reaching those conclusions, the courts relied on several cases, which they said involved similar and much more egregious behavior, finding it significant that

those courts had found summary judgment appropriate because the conduct complained of was not "based on sex." A few of the cases are as follows: English v. Pohanka of Chantilly., 190 F. Supp .2d 833, 836 (E.D. V. 2002); Davis v. Coastal International Security, Inc., 275F.3d 1119, 1121 (D.C. Cir. 2002); and Johnson v. Hondo, Inc., 125 F.3d 408, 410 (7th Cir. 1997).

The most glaringly distinguishing fact in the cases filed on by the lower courts is that all involved male/male harassment claims. In the decisions cited above the courts recognized that males making sexual references to other males are often inspired by motivations such as intimidation and animosity. As noted by almost all courts considering sexual harassment claims, context matters. A court considering the same-sex harassment of Pedroza's claims, a female by another female, cannot use the identical yardstick which it utilized to measure male to male harassment. The cases of female to female harassment present a different picture. First there are considerably fewer cases,

presumably because there is no female "horseplay" which courts must routinely sort through to determine if the alleged harassment was "based on sex," or simply "males being males." Women simply do not often grab other women or utter vulgar comments. Female workers do not "roughhouse" with their fellow females by trying to grab their genital area or even to kiss them, This shows that when courts are looking at the totality of the circumstances, as they must on a summary judgment motion, they must be careful to delineate *crass, vulgar* male behavior, which is relatively common (regrettably) in the workplace, from on-the-job female conduct.

The lower courts erroneously turned to cases exploring the bounds of remarks and gestures made by *males to other males* in order to assess the viability of Pedroza's claim. As demonstrated above, male harassment takes the form of incredibly vulgar comments and crude gestures. The lower courts improperly looked at male behavior to gauge the actions of females in the workplace and what could be reasonably

inferred from that conduct. The actions of Pam Straw, when viewed in their proper context of ***females*** in the workplace, rather than males, deserve an inference that the conduct was indeed premised on sexual proposition.

The lower courts improperly weighed material facts at issue, judged the credibility of evidence, and completely ignored portions of Pedroza's evidence when it found that Pam Straw's sexually harassing treatment of Pedroza was not "because of sex" and that it was insufficient as a matter of law to constitute a hostile environment as required by Title VII. Specifically, the lower courts ignored a coworker's statements that she had witnessed the sexually harassing behavior and reported it to management. The lower courts failed to give Pedroza the benefit of inferences from that testimony as well as other circumstantial evidence about the sexual orientation of Pam Straw.

The Circuit has specifically noted: "At the summary

judgment stage, the court should not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter." Quick v. Donaldson Co., Inc., 90 F.3d 1372, 1376-77 (8th Cir. 1999) (emphasis added). Further, when it reviewed the "facts," the lower courts completely ignored the deposition testimony of Pedroza's coworker Donna Kay Lewis, who testified that she actually *saw* Straw attempt to kiss Pedroza on two occasions and that she (Lewis) certainly considered it to be sexual harassment. In fact Ms. Lewis had actually reported this unwelcome sexual conduct to the Human Resources Director[4]. The courts' "fact" that Straw's behavior is based on pre-existing dislike sounds *controverted*, rather that "uncontroverted." That alone should be sufficient to defeat a motion for summary judgment.

Finally the courts turned to the absence of definitive evidence that Straw is a lesbian in order to conclude that the harassment

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[4]Rhonda Braker, in her testimony, she denies Lewis ever made a complaint.

was not "because of sex". In her deposition, Pedroza testified that she had no facts causing her to believe that Straw is or has ever been a lesbian. The petitioner pondered what exact "facts" would be necessary to ***know*** whether Pam Straw is a lesbian or not. Pedroza asserts that the lower courts' requirement of "facts" showing the harasser's sexual orientation are simply too onerous for the sexually harassed petitioner to "prove." Consider the environment. It's a workplace. What rational employee is going to be "out" at work? In most locations within the United States, merely revealing a sexual orientation other than heterosexual will buy you nothing but trouble or a pink slip. The workplace is probably the *LAST* place where a homosexual would be open and, therefore, give some form of concrete knowledge to a coworker of that person's sexual orientation.

Certainly, at least the summary judgment stage, courts must instead place more reliance on inferences for this element Pedroza's prima facie case. The conduct itself provides the

largest clue as to whether the harassment was "based on sex." As stated earlier, a comparison of *female/female* cases provides a starting point for the analysis. Most cases granting summary judgment find that the allegedly harassing conduct had occurred over a very short period of time, that the actions were either innocuous and boorish, or completely devoid of sexual content. However, in contrast, Straw's sexually harassing behavior toward Pedroza lasted for months and consisted of overt sexual actions. Straw attempted to kiss Pedroza on the lips on three separate occasions. Straw covertly stroked Pedroza's hand. Straw blew kisses at Pedroza. Other circumstantial evidence lends credence to Pedroza's contentions that this harassment was "based on sex".[5] Cintas also provided other evidence that

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[5]Workplace rumors circulated about "which way she(Straw) swung." In the meeting on August 30, 2000, Plant manager Cliff Smith told Pedroza that she should be more tolerant of other people's "lifestyles." "Lifestyle" is a well-known euphemism for a person;'s *homosexual* orientation. See e.g., Philips v. Collings, 256 F.3d 843, 846 (8th Cir. 2001); Greenway v. Buffalo Hilton Hotel, 143 F.3d 47, 52 (2nd Cir. 1998); and Jackson v. Brigle, 17 F.3d 280, 282 (9th Cir.) Cert.denied, 513 U.S. 868 115 S.Ct. 187, 130 L.Ed.2d 121 (1994).

the conduct complained of was considered sexual harassment by Cintas. When Pedroza sought unemployment benefits, her supervisor Garrett Anderson testified under oath that the actions of Straw, of true, would not be allowed by Cintas under its sexual harassment policies.

The lower courts also erred when it concluded that the sexually harassing behavior of Straw was not severe or pervasive and incorrectly based its decision, in part, on cases distinguishable both factually and analytically.

To prove her prima facie case of hostile work environment, Pedroza must show that the harassment was either severe or pervasive. Harris v. Forklift Sys., Inc., 510 U.S. 17, 21, 114 S.Ct. 367, 370, 126 L.Ed.2d 295 (1993). In making that determination, courts must look at the totality of the circumstances, including frequency and severity of the harassing conduct; whether the conduct was physically threatening or humiliating; and whether it unreasonably interferes with an employee's work performance. In order to be actionable, the

workplace must be "both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so," Faragher v. City of Boca Raton, 524 U.S. 775, 787, 118S.Ct. 2275, 2283, 141 L.Ed.2d 663 (1198). "Courts should avoid disaggregating a hostile work environment claim, dividing conduct into instances of sexually oriented conduct and instances of unequal treatment, then discounting the latter category of conduct." O'Rourke v. City of Providence, 235 F.3d 713, 730 (1st Cir. 2001).

In finding that Straw's sexual harassment of Pedroza did not amount to actionable conduct, the lower courts relied primarily on an Eighth Circuit decision, Duncan v. General Motors Corp., 300 F.3d 928 (8th Cir. 2002), cert.denied, 2003 WL 447149 (Apr. 21, 2003), as well as noting the cases cited in Duncan from other jurisdictions. However, this case bears little resemblance to Duncan-either factually or analytically. Duncan involved a *male* harassing a *female*. The actions of Straw

cannot be measured against what a reasonable person would consider abusive when a male harasses a female. Instead, those actions must be considered in light of all the circumstances: what behavior of a *woman* directed against another woman is so egregious that it amounts to harassment? See Burns v. McGregor Electronic Industries, Inc., 989 F.2d 959, 962 n.3 (8th Cir. 1993) ("In adopting a 'reasonable person' test under Title VII, the EEOC has stressed that objective criteria should be utilized from 'the victim's perspective and not stereotyped notions of acceptable behavior.' Thus, behavior a reasonable woman would find objectionable may be actionable 'even if many people deem it to be harmless or insignificant.'") (internal citations omitted).

It is, therefore, improper for the lower courts to weigh the facts to conclude that the level of conduct did not constitute a hostile environment. To be actionable, the harassing behavior must be both subjectively and objectively offensive. Faragher, 524 U.S. at 787, 118 S.Ct. at 2283. There can be no doubt that

Pedroza found Straw's conduct offensive. In its motion for summary judgment, Cintas belabors the alleged "hypersensitivity" of the petitioner. Even if true, that has no relevance to the question before the court. Pedroza's "sensitivity" to being kissed by another woman, even if true, does not negate the fact that she was offended by Straw's actions and, therefore, the subjective element is satisfied.

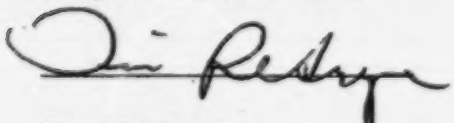
The only remaining question is whether that sexually harassing conduct was objectively offensive: would a reasonable woman find Straw's attempted kisses, holding of hands, and other continual gestures offensive? Accepting all of the allegations as true, as the Court must on a summary judgment motion, the inquiry must be, could a reasonable women be offended by another woman who attempts to kiss her on the lips three times, holds her hand, tells her "she wants her," blows her kisses, and suggestively touches her buttocks repeatedly? Pedroza alleges that this conduct was both severe and pervasive. It did not abate even though she complained to Cintas

management. Pedroza was so upset that she was forced to seek help at an emergency room for her stress. A doctor has opined that the stress caused by the sexually harassing behavior of Straw led to Pedroza's depression and post traumatic stress disorder. The lower courts erred when they determined that Straw's conduct was not severe or pervasive. This court should grant the petition and hopefully reverse the judgments of the lower courts.

CONCLUSION

For the above stated reason, Petitioner Terri Pedroza requests and prays that the petition for a writ of certiorari be granted.

Respectfully submitted,



Terri Pedroza

Date: August 8th, 2005

No._____

In The Supreme Court of the United States

Terri Pedroza,
Petitioner,
-V-
Cintas Corporation,
Respondent.

Proof of Service

I, Terri Pedroza, do swear or declare that on this date, Aug. 8 20 05, as required by Supreme Court Rule 29 I have served the enclosed **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS** and **PETITION FOR WRIT OF CERTIORARI** on each party to the above proceeding or that party's council, and on every person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

John A. Vering III Armstrong Teasdale
2345 Grand Boulevard, Suite 2000 L.L.P.
Kansas City, Missouri 64108

I declare under penalty of perjury that the foregoing is true.

Executed on Aug. 8, 2005

(Signature)

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 03-1407

Terri Pedroza,

Plaintiff - Appellant,

David Pedroza,

Plaintiff,

-V-

Cintas Corporation No. 2, doing business as Cintas Corporation; Cintas Corporation, Sponsor and Administrator of Cintas Corporation Partner Medical Benefit Plan,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Missouri.

(Filed February 11, 2005)

Before MELLOY, BEAM, and COLLOTON, Circuit Judges.

MELLOY, Circuit Judge.

Terri Pedroza appeals the district court's[1] adverse grant of summary judgment ib ger same-sex sexual discrimination claims under Title VII and the Missouri Human Rights Act. Because she failed to present sufficient evidence to demonstrate a genuine question of material fact as to whether the allegedly discriminatory behavior was based on sex, we affirm the district court's grant of summary judgment on hostile work environment claim. Consequently, we also affirm the district court's dismissal of her retaliation, constructive discharge, and "punitive damages" claims

I.

Cintas Corporation ("Cintas") hired Pedroza to work at

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[1]The Honorable Richard E. Dorr, United States District Judge for the Western District of Missouri.

its Springfield, Missouri facility on July 22, 1998. Cintas promoted her to the position of "team leader" after a few months. Team leader is a nonsupervisory position that involves some direction and coordination of coworkers. She worked initially in the "pants department" but eventually worked in the "shirt hanging department" as well. According to Pedroza's own expert witness psychologist, Pedroza is a "concrete person" who has difficulty understanding the subtleties of non-literal communication such as sarcasm and whose intelligence test scores suggest borderline mental retardation.

The instances of alleged harassment all relate to the actions of one female coworker, another team leader, Pam Straw. As early as 1999, numerous coworkers witnessed arguments between Straw and Pedroza, claimed that there was "friction" between Straw and Pedroza, and claimed that the two women repeatedly "butted heads" and "bickered" with raised voices. In fact, Straw told others that Pedroza was not a good team leader before the first alleged instance of harassment took

place. One coworker reported that Straw said, "Well it would be better if she [Pedroza] knew what she was doing so she could tell the girls how to do it." In addition, when Straw found mistakes in the work of Pedroza's team members, she brought the mistakes directly to the team members rather than to Pedroza, as Pedroza argues would have been appropriate.

According to Pedroza, Straw's harassing behavior began in mid-May 2000 and continued through September 2000, when Pedroza resigned. In mid-May, Straw attempted to hold Pedroza's hand when Pedroza showed pictures of her grandson to Straw. When Pedroza recoiled and asked Straw to stop, Straw said, "You want me to kiss you, honey?" Straw then grabbed Pedroza's face and attempted to kiss her on the mouth. Pedroza jerked away and Straw's wet kiss landed on Pedroza's cheek. Straw stated, "You love it honey." Pedroza went immediately to the Springfield Plant Manager, Russ Watkins. Watkins told Pedroza that the behavior was simply Straw's personality.

Pedroza also claims that on a later occasion, Straw approached her and said, "Terri, you're awfully quiet today. Didn't you ger a piece of ass last night?" Pedroza responded by telling Straw to "go home to her husband." Straw then told Pedroza that she didn't have a husband and said, "I want you, honey."

In early June 2000, Pedroza asked Straw for assistance on a work-related matter. In response, Straw bent over, pointed her own buttocks at Pedroza, rubbed her own buttocks, and told Pedroza, "Kiss it Terri. You love it." In late June, Straw again grabbed Pedroza's face. Believing that Straw was again attempting to kiss her, Pedroza jerked away. When Pedroza jerked away, Straw ceased her attempt and said, "Kiss my ass." Pedroza reported this incident to her immediate supervisor, Garrett Anderson. Anderson told Pedroza that he would take care of it.

Throughout the summer, Straw repeatedly blew kisses at Pedroza, used foul language around Pedroza, and rubbed her

own buttocks while looking at Pedroza. Pedroza complained of this behavior on several weekly reports that she gave to Watkins. Another coworker, Donna Lewis, witnessed much of Straw's behavior and reported this behavior to management on Pedroza's behalf. Lewis reported to Human Resources Director Rhonda Braker that Straw grabbed and tried to kiss Pedroza and that people talked about "which way [Straw] swung."

Pedroza claims that she also reported Straw's actions to Braker and told Braker that "Pam is out there bowing kisses at me and doing all these gestures to me, and it's not professional." Pedroza also claims that when she told Braker Straw's behavior made her uncomfortable, Braker responded, "the boys are already taking care of it." because Straw's actions continued and Pedroza did not see any management response, Pedroza secretly taped a conversation with Braker. The tape reveals that Pedroza did mention the fact that Straw had been blowing kisses at Pedroza. Braker, however, testified at Pedroza's unemployment hearing that Pedroza did not complain directly to

her about Straw and that she learned of Pedroza's complaints through an investigation that Watkins conducted.

Near the end of July, Straw again blew kisses at Pedroza. Pedroza stated, "Pam, don't do that. This is sexual harassment." To which Straw replied, "Write me up. You love it, you know it. Write me up." Near the end of August, Straw asked Pedroza to let Straw temporarily borrow a worker form Pedroza's team. After Pedroza agreed, Straw again grabbed Pedroza's face, and this time,. Kissed Pedroza on the cheek and said, "I love ya honey." Pedroza reported this incident to Anderson and said that she had to leave work because she simply could not handle the stress over Straw's behavior. Pedroza then left work to use vacation time.

While on vacation, Pedroza received a call form Cliff Smith, the General Manager at the Springfield facility. Smith asked Pedroza to return to work for a meeting with Braker. At this meeting, which Pedroza secretly recorded. Smith said he did not want to lose Pedroza or Straw, he thought it had all been

"blown out of proportion," "we're tired of the friction," and Pedroza needed to be "more open minded to other people's lifestyles."

The team members who worked with Straw and Pedroza suggested that the two switch job duties within the company. Straw and Pedroza did switch positions–a move that involved no change in pay, title, or working conditions and that Pedroza does not allege was a demotion. After the switch, Straw continued to blow kisses at Pedroza, Pedroza reported to Anderson, and when Cintas management did not act, Pedroza resigned.

Pedroza then brought this action against Cintas. She alleged sexual harassment (hostile work environment), retaliation, constructive discharge, and religious discrimination (Pedroza is a Jehovah's Witness) under Title VII and the Missouri Human Rights Act. Pedroza also brought a separate claim that she characterized as a claim for punitive damages alleging that Cintas acted with a conscious disregard for her

federally protected rights. Pedroza argued that Straw's actions were based on sex because they were gender specific and motivated by homosexual desire. However, when asked in her deposition whether she knew if Straw was a lesbian, Pedroza admitted that she did not know, stating, "I don't know which way she may go. She may want to go both ways. I don't know." After certain evidence was excluded (Pedroza does not appeal any evidentiary rulings), the remaining evidence that Pedroza cited to support her theory that Straw's harassing behavior was motivated by homosexual desire, and therefore based on sex, was (1) the arguably sexual nature of the offensive acts themselves (repeatedly attempting to kiss Pedroza on the mouth or cheek, grabbing Pedroza by the face, stroking Pedroza's hand, and making suggestive comments) and (2) Smith's statement that Pedroza needed to be more open minded about other people's lifestyles. It is undisputed that Straw had five children by a former marriage and was in a long-term, live in, heterosexual relationship with her boyfriend. There was no

other evidence regarding Straw's sexual history or preferences.

Cintas moved for summary judgment on all claims. The district court held that there was insufficient evidence to create a question of material fact as to the issue of whether the harassing conduct was based on sex. In addition, the district court found that the harassing conduct was not so pervasive as to constitute a hostile work environment. Finally, the district court found that there was no adverse employment action. Pedroza abandoned her religious discrimination claim during the summary judgment process, and the district court dismissed all of Pedroza's remaining claims. Pedroza appeals.

II.

We review the district court's grant of summary judgment de novo, view the record in a light most favorable to the non-moving party, and draw all reasonable inferences in that party's favor. McCown v. St. John's Health Sys., Inc., 349 F.3d 540, 542 (8th Cir. 2003). Summary judgment is appropriate only where there exists no genuine questions of material fact such

that no reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).

Title VII prohibits an employer from discriminating against an employee based on the employee's sex. 42 U.S.C. § 2000e-2(a)(1). Discrimination based on sex that creates a hostile working environment violates Title VII. Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993) ("When the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, Title VII is violated.") (internal citations and quotation marks omitted). To state a prima facie case for a claim of sexual discrimination based on a hostile work environment, an employee muss show: (a)she belongs to a protected group; (b)she was subject to unwelcome sexual harassment; (c)the harassment was based on sex; (d)the harassment affected a term, condition, or privilege of

employment; and (e)her employer knew or should have known of the harassment and failed to take proper remedial action, McCown, 349 F.3d at 542. In the present case, we address the third requirement, whether the harassment was based on sex.

The based on sex requirement forces a plaintiff to prove that she was the target of harassment because of her sex and that the offensive behavior was not merely non-actionable, vulgar behavior. This distinction exists because "Title VII does not prohibit all verbal or physical harassment in the workplace" and is not "a general civility code for the American workplace." Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 80 (1998) (recognizing a claim for same-sex harassment that created a hostile work environment where the alleged harassment forced an oil platform worker in the Gulf of Mexico to quit his job out of a fear of same-sex rape). Consequently, to succeed on a hostile work environment claim under Title VII, a plaintiff must show "that the conduct at issue was not merely tinged with offensive sexual connotations, but actually

constituted 'discrimina[tion]...because of...sex." Id. At 81 (quoting 42 U.S.C. § 2000e-2(a)(1)).

As we recognized in McCown, the Supreme Court set forth a non-exhaustive list that included three possible evidentiary routes same-sex harassment plaintiffs may follow to show that the harassment was based on sex:

> First, a plaintiff can show that the conduct was motivated by sexual desire. Second, a plaintiff can show that the harasser was motivated by a general hostility to the presence of the same gender in the workplace. And third, a plaintiff may offer direct comparative evidence about how the harasser treated both males and females in a mixed-sex workplace.

McCown, 349 F.3d at 543 (citing Oncale, 532 U.S. at 80-81). Here, the second and third methods are not applicable. The relevant workplace appears to have been exclusively female, and, at any rate, Pedroza offers no comparative evidence regarding the treatment of males at Cintas. Further, Pedroza concedes that Straw was not generally hostile towards other women in the workplace.

What remains is the question of whether, based on the

summary judgment record taken in a light most favorable to Pedroza, any reasonable jury could find that sexual desire motivated Straw's actions towards Pedroza. Pedroza points to the facts that one coworker suggested "people" questioned "which way [Straw] swung" and General Manager Smith told Pedroza to be more open to other people's lifestyles. We may not consider the comments or rumors from non-management coworkers regarding Straw's sexual orientation because the district court granted Cintas's motion in limine to exclude these comments, and Pedroza does not contest that ruling. We also refuse to consider Smith's comment because, although the district court's file contained a transcript of the recorded conversion in which Smith made the "lifestyle" comment, Pedroza did not bring this statement to the attention of the district court in her brief in opposition to Cintas's summary judgment motion or in any counter statement of the facts before the district court. See Crossley v. Georgia-Pacific Corp., 355 F.3d 1112, 1114 (8th Cir. 2004) (noting the burden on a triable

question of fact); Jaurequi v. Carter Mfg., Co., 173 F.3d 1076, 1085 (8th Cir. 1999) ("[A] district court is not 'obligated to wade through and search the entire record for some specific facts which might support the nonmoving party's claim.'") (internal citation omitted).

Pedroza therefore must rely solely on the nature of Straw's harassing actions themselves–grabbing Pedroza's face and attempting to kiss her on the mouth and cheek, attempting to hold Pedroza's hand, pointing to her own buttocks and telling Pedroza to "kiss it," saying to Pedroza "kiss my ass" when Pedroza asked for help, blowing kisses at Pedroza, and saying that she didn't have a husband that she wanted Pedroza–as evidence that sexual desire motivated Straw's behavior.

Cintas, on the other hand, notes that it was undisputed that Straw had five children from a former marriage; Straw was in a long-term, live-in, heterosexual relationship with her boyfriend; Straw and Pedroza had a generally antagonistic relationship with each other that proceeded any allegedly

harassing conduct; and, according to Pedroza's own expert, Pedroza was a "concrete person" of limited intelligence who had difficulty understanding sarcasm and who tended to take statements literally. Pedroza asks us to conclude that a jury question exist as to whether sexual desire motivated Straw's behavior. Cintas asks us to conclude that the evidence permits only one reasonable interpretation, namely, that Straw was a vulgar and boorish coworker who sought to antagonize Pedroza and that Pedroza misunderstood and misinterpreted Straw's actions.[2]

To buttress its argument, Cintas points to a line of cases from this and other circuits wherein courts found that instances

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[2]We disagree with Straw regarding the inferences that may flow from the facts that she had children and had been in a long-term relationship with a man. These facts tend to prove only that Straw was not strictly homosexual. They do not preclude a jury from finding that Straw was motivated by some degree of homosexual desire towards Pedroza. It would be naive and artificial for us to conclude otherwise.

of alleged same-sex harassment were not "based on sex" but rather, were vulgar and boorish behavior that was "tinged with offensive sexual connotations" but not suggestive of motivation by sexual desire. See McCown, 349 F.3d at 541-43 (finding that harassment was not motivated by sexual desire where the victim suggested the harasser was "just trying to 'irritate' him," and the harasser grabbed the victim in simulated intercourse, and the harasser grabbed the victim on the waist, chest, and buttocks, pressed against the victim in simulated intercourse, and attempted to put objects in the victim's buttocks); Linville v. Sears, Roebuck & Co., 335 F.3d 822,823-24 (8th Cir. 2003) (finding harassment not based on sex where the harasser repeatedly struck the victim in the scrotum); Davis v. Coastal Int'l Sec., Inc., 275 F.3d 1119, 1125 (D.C. Cir. 2002) (finding that harassment was not based on sex where two harassers had a pre-existing antagonistic relationship with the victim and repeatedly brushed against the victim, grabbed and manipulated his own crotch in front of the victim, and repeatedly described

oral sex towards the victim). The Seventh Circuit in Johnson explained the reasoning that supported this line of cases:

> Most unfortunately, expressions such as... "Kiss my ass," and "suck my dick," are commonplace in certain circles, and more often than not, when these expressions are used (particularly when uttered by men speaking to other men), their use has no connection whatsoever with the sexual acts to which they make reference-even when they are accompanied, as they sometimes were here, with a crotch-grabbing gesture. Ordinarily, they are simply expressions of animosity or juvenile provocation[.]"

Johnson, 125 F.3d at 412. Straw urges us to hold as a matter of law that Pedroza's actions are analogous to the harassers' actions in the above cases and that no reasonable jury could infer homosexual desire from Straw's actions.

Pedroza counters that, because this case involves allegations of same-sex harassment between females rather than same-sex harassment between males, we must not compare the facts of this case to the above cases that involved only male, same-sex harassment. Instead, she argues, we must apply a different standard in the context of female same-sex harassment to find the line that separates permissible albeit unpleasant and

vulgar behavior from prohibited behavior that is based on sex. Pedroza points to cases such as Johnson in which the court specifically noted the common use of vulgar expressions in the workplace "particularly when uttered by men speaking to other men." Id. Pedroza concludes that, because such bawdy, "locker room" behavior is not as commonplace among females, a reasonable jury could more readily infer actual sexual desire based on similar statements or acts by females, and, accordingly, we should be more hesitant to grant summary judgment in a case that involves female same-sex harassment.

On this specific point, we disagree with Pedroza. First, we do not find it appropriate in the context of Title VII to establish dual standards for the "based on sex" showing required in male and female same-sex harassment cases. Further, even if we were inclined to draw such a distinction, Pedroza offers nothing but her own unsupported opinions as to the prevalence of vulgar language and behavior in female dominated workplaces. Accordingly, we reject Pedroza's argument that we

cannot look to cases that involve male same-sex harassment to determine whether a female, same-sex harassment plaintiff has made the showing required to create a jury question under the based on sex requirement.

Looking at the entirety of the evidence *that we may consider*, and comparing the facts of this case to the developing body of authority under the "based on sex: analysis in same sex harassment cases, we believe the district court correctly determined that the evidence to suggest motivation by homosexual desire was insufficient to create a triable question of fact. Accordingly, Pedroza's hostile work environment claim fails.

Pedroza raises no separate arguments based on state law, and we hold that Pedroza's retaliation and constructive discharge claims fail for the same reason as her hostile work environment claim. Pedroza's retaliation and constructive discharge claims also fail due to the absence of an adverse employment action. Pedroza voluntarily switched positions

after Straw and Pedroza's coworkers suggested the switch. There was no diminution in pay or benefits, and working conditions did not change in a manner that we may characterize as adverse. Pedroza argues that she was unfairly criticized after the switch, but criticism in a new position is to be expected. Finally, regarding Pedroza's separate claim for punitive damages, even if we had found that her underlying evidence shows that Cintas management attempted to curtail Straw's actions. As such, even if Pedroza had ultimately prevailed, an award of punitive damages would not be appropriate.

We affirm the judgment of the district court.

COLLOTON, Circuit Judge, concurring.

I concur in the opinion of the court, with a brief clarification concerning footnote 2. I agree that the facts that Straw had children and had been in a long-term relationship with a man "do not preclude a jury from finding that Straw was motivated by some degree of sexual desire towards Pedroza," *ante*, at 9 n.2, but I think it is an overstatement to say that

"[t]hese facts tend to prove only that Straw was not strictly homosexual." *Id.* A long-term heterosexual relationship is *relevant* to whether Straw acted out of homosexual desire less probable than if, say, Straw had been in a long-term homosexual relationship, *see* Fed. R. Evid. 401 - but it is by no means conclusive on the point. I thus agree that Cintas's argument in favor of summary judgment on this basis should be rejected.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MISSOURI

SOUTHERN DIVISION

No. 6-01-3247-CV-S-RED

Terri Pedroza,

Plaintiff,

-V-

CINTAS Corporation,

Defendant.

MEMORANDUM AND ORDER

Currently pending before the Court is Defendant Cintas Corporation's ("Cintas") motion for summary judgment(Doc. #65). This case involves suit by a former employee against her employer for sexual harassment in violation of Title VII.

Plaintiff has also asserted a claim for violation of the Missouri Human Rights Act, alleging retaliation, constructive discharge, religious discrimination,[1] and for punitive damages. Cintas moves for summary judgment on all counts. For the reasons discussed below, the Court finds that plaintiff has failed to raise a genuine issue of fact demonstrating that her co-worker Pam Straw's alleged harassment was "because of sex" nor has plaintiff shown that alleged harassment was severe or pervasive. Similarly, the court holds that plaintiff's claims for retaliation, constructive discharge, religious discrimination, and for punitive damages fail as a matter of law.

I. **Summary Judgment Standard**

Rule 56(c) Federal Rules of Civil Procedure, provides that summary judgment shall be rendered if the "pleadings, depositions, answers to interrogatories, and admissions on file,

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[1]In her opposition to summary judgment, plaintiff states that she has now abandoned her claim for religious discrimination and offers no response to this part of Cintas' motion.

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Fry v. Holmes Freight Lines, Inc.*, 73 F. Supp.2d 1074 (W.D. Mo. 1999). When ruling on a motion for summary judgment, the court should view the facts in the light most favorable to the adverse party and allow the adverse party the benefit of all reasonable inferences to be drawn from the evidence. See id. (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 1608, 26 L.Ed.2d 142 (1970); *Reed v. ULS Corp.*, 178 F.3d 988, 900 (8th Cir. 1999)).

If there is no genuine issue about any material fact, summary judgment is proper because it avoids unnecessary and costly litigation and promotes judicial efficiency. See id (citing *Smith v. Marcantonio*, 910 F.2d 500, 502-03 (8th Cir. 1990); *Roberts v. Browning*, 610 F.2s 528, 531 (8th Cir. 1979)). The summary judgment procedure is not a "disfavored procedural shortcut." Id. Rather, it is "an integral part of the Federal Rules as a whole." Id. (citing *Celotex Corp. v. Catrett*, 477 U.S. 317,

106 S.Ct. 2548, 2555,91 L.Ed.2d265 (1986)). Summary judgment is appropriate against a party who fails to make a showing sufficient to establish that there is a genuine issue for trial about an element essential to that party's case, and on which that party will bear the burden of proof at trial. See *Cunningham v. Kansas City Star Co.*, 995 F.Supp. 1010, 1014 (W.D. Mo. 1988) (citing *Celotex*, 477 U.S. at 324, 106 S.Ct. 2548).

II. **Background**

Based on the parties' pleadings, affidavits, and deposition testimony, the following facts are undisputed or, if disputed and plaintiff properly presented facts supporting her version of disputed facts, the disputed facts are presented in the light most favorable to plaintiff. See *Fry v. Holmes Freight Lines, Inc.*, 72 F.Supp.2d 1074, 1076 (W.D. Mo. 1999).

Cintas hired plaintiff terri Pedroza ("Pedroza") on July 22, 1998. On September 7, 1998, Cintas promotedped to work

as a team leader in the pants hanging department. Team leader is a nonsupervisory position involving some direction and coordination of co-workers.

Pedroza alleges that she was sexually harassed by a female co-worker, Pam Straw, from early 2000, until September 29, 2000. Straw worked at the same level as Pedroza as a team leader, but in the sorting department.[2]

The record reveals that co-workers observed friction between Pedroza and Straw beginning in late 1999. Some stated it appeared Straw didn't like Pedroza. One overheard bickering and raised voices between them. Another described it as kind of butting heads or having some friction.

The earliest incident of harassment claimed by Pedroza occurred on or about May 15-18, 2000. Pedroza was showing pictures of her grandson to Straw. She tried to hold or grab

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[2]The sorting department is in charge of separating the company's products and sorting them into their designated shipping routes.

Pedroza's hand. Pedroza pulled her hand away, told her to stop and Straw said, "You want me to kiss you, honey." Straw then kissed her on the cheek and stated, "You love it, honey." This was the first time Straw had tried to kiss her. Pedroza says she reported this incident to Russ Watkins, the plant manager at Cintas' Springfield facility and that Watkins responded that it "was her (Straw's) personality."

The next incident that Pedroza recalls occurred on June 8, 2000, when she asked Straw to ger her line moved down to give Pedroza's team more room to hang their goods. Straw responded by kissing her own hand, rubbing it on her own buttocks, and stating, "kiss it, Terri. You love it." Pedroza did not report this incident to Cintas management, but did tell Straw that it was inappropriate and she uncomfortable with it.[3]

Pedroza claims another incident of harassment occurred

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[3]Robin Hildebrand, an employee who worked with Pedroza in the pants department, observed Straw kiss her hand and slap her buttocks to other employees, but took it as a joke.

after May 18, 2000, but possibly before June 8, 2000, when Straw said, "Terri, you're awfully quiet today. Didn't you get a piece of ass last night?" Pedroza believes this was a time when she replied, "Go home to your husband," and Straw said she didn't have a husband and "I want you, honey."

Near the end of June or July of 2000, Pedroza again asked Straw for help in moving a line of clothing. Straw came around to where Pedroza was standing and grabbed Pedroza's face with on hand. Pedroza jerked away. There was no kiss on this occasion. As Straw walked away she told Pedroza to kiss her ass. Pedroza reported this incident to her immediate supervisor, Garrett Anderson.

Pedroza recalls that sometime in late July or early August 2000, she saw that Straw was blowing kisses at her. Pedroza said, "Pam, don't do that. That is sexual harassment," and Straw allegedly responded, "Write me up. You love it, you know it. Just write me up." Thereafter, Pedroza testified in her deposition that she complained to Rhonda Braker, Cintas

Human Resources Manager, stating, "Pam is out there blowing kisses at me and doing all these gestures to me, and it's not professional," and "I'm very uncomfortable with it." Braker responded that "the boys are already taking care of it." Pedroza secretly recorded this conversation. The transcript of the recording reflects a date of August 25, 2000, and the only reference to the complaint about Straw is, "She's blowing me kisses, she's doing the same nit-pickin' that she did with Susan." The transcript does not contain any language similar to "the boys are taking care of it."

Pedroza also met with Watkins to complain of Straw's behavior and use of offensive language. Watkins documented the meeting as having occurred on August 4, 2000, and prepared a record of communication, which Pedroza signed, and advised Pedroza to report any other instances of an employee doing anything inappropriate in the workplace. Watkins later met with Straw and warned her that "foul language" was inappropriate in the workplace. A record of communication was

prepared and placed in Straw's personal file.

On August 25, 2000, Straw approached Pedroza and asked her if she could borrow one of Pedroza's girls. Pedroza said they "were kind of behind" but agreed. Straw then grabbed Pedroza by her face, said, "love ya," kissed her on the side of her cheek and stated, "I love ya, honey."[4] Pedroza told Garrett Anderson she had to leave because she was stressed out because Straw was harassing her and had just kissed her on the cheek. Pedroza told Anderson that she couldn't handle it anymore and left work crying and upset. After leaving work, Pedroza had a phone conversation with Cliff Smith, Cintas' general manager of its Springfield facility, and told him that "Pam was blowing me kisses and...all the acts that Pam was doing." Smith set up an appointment for her to come in and see him.

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[4]In an affidavit submitted by Straw and attached to Defendant's reply, Straw states that she does not recall ever telling Pedroza that "I love you" or "I love you, honey." In the event Straw did use theses words, Straw states that it would have been as a joke in the context of thanking Pedroza for lending her one of her team members to help on a task.

On the Friday before August 30, 2000, Smith held a meeting with the team members and sought advice on how Cintas could keep Pedroza as an employee and how the company could resolve Pedroza's conflict with Straw. Pedroza's team members suggested that Straw and Pedroza should temporarily switch jobs, which the team members felt might allow Straw and Pedroza to better understand the other's job while also creating a better relationship among the two.

On August 29, 2000, Watkins, at the direction of Smith, investigated the kiss blowing allegations. He met with Straw to obtain her version of the events. Straw admitted blowing a kiss at Pedroza and making a kissing sounds, but stated that she was joking and that she thought Pedroza understood it as a joke. Watkins responded by warning Straw to be very careful about her workplace conduct and that anything that can be perceived as harassment is not acceptable. Watkins also explained that blowing a kiss or making a kissing sound to a co-employee can be perceived as harassment. The meeting ended by Watkins

having Straw sign a record of communication documenting the council session, and placing the record in Straw's personnel file.

The next day, August 30, 2000, Smith, Braker, and Watkins met with Pedroza in Smith's office and had a conversation, which Pedroza secretly tape recorded. In this meeting (according to the transcript of the tape recording), Pedroza's statements concerning Straw's conduct included:

> Well, when you ask her to do something, it just starts the childish stuff out there and it's like, you deal with it or you come up here and nanny, nanny, nanny, we're not in school.
>
> . . .
>
> Well, it's just the thing you gotta be back there to see. The little nanny, nanny, nanny stuff, and , you knowI mean, it's even verbally said, you know nanny, nanny, nanny. You know. We're all grown adults. We don't need to come and hear that.
>
> . . .

But, I mean it's just the continuous little nips and it's just, it's uncalled for.

In response to a statement by Watkins about getting to some common ground between Pedroza and Straw, Pedroza stated:

> Well, we've been there. We've been there and we've gathered with, you know, got with Rhonda and Russ and stuff, we get back out on the floor and just not anything, you know, 'Pam could I please get line two or can you pull that one next,' you know and then her girls went and pulled somethin' else and here we are still pushing and shoving, I mean it's just back to the same thing again, instead of...what it is, it's communication and working together as a team. That's our big problem.

Pedroza did not mention Straw's use of foul language, blowing of kisses, telling Pedroza to kiss her buttocks, actual kisses, attempted kisses, or any other actions which are now the source of Pedroza's sexual harassment complaint.

In response, Smith told Pedroza that he did not want to lose her as an employee. He also stated that he had investigated the incident and felt that she had taken Straw's conduct out of context. Regardless, Smith informed Pedroza that Straw had been counseled and that kind of action would not be tolerated As a solution to Pedroza and Smith not getting along, Smith asked her whether or not she would be willing to temporarily assume Straw's role as the team leader in the sorting department in return for Straw assuming Pedroza's job as the team leader in the shirts and pants hanging department. Pedroza agreed to the switch. It should be noted that this temporary switch of duties did not involve a change of pay. benefits, working conditions, or hours of work not was it perceived as any kind of a demotion.

Pedroza was on vacation on August 30, 2000, when she met with Cintas management. When Pedroza returned from vacation she made the switch in duties with Straw that had previously been agreed to as an attempt to help resolve their differences. During this time in September, 2000, Pedroza

claims that the harassment continued in that "She [Straw] kept coming up at that area blowing me kisses, harassing me, telling me I was doing things wrong or differently or ___ to me, I felt they were all ganging up on me." Pedroza believes there were four or five incidents of kiss blowing during this period. She did not say anything to Straw, but did tell Garrett Anderson that Straw was blowing kisses at her. Anderson did not say anything in reply to her.

On September 29, 2000, Anderson assigned Pedroza to work the man sort position because he wanted her to learn the position. Later that day Pedroza complained to Anderson that a couple of the girls were telling her what to do. After this conversation, Pedroza started pulling clothes off the mending department line. Several of the Sort Team members working on Pedroza's team complained to Anderson that Pedroza was not pulling her weight on the job. Anderson then told Pedroza that he wanted her to return to the man sort position and learn that area. Pedroza confronted Anderson and asked why she needed

to go up front and learn that position. She also threatened to resign, and claimed that she was not being supported by management because they were allowing co-workers to criticize her performance. Pedroza also complained that Straw began cussing at her, told her she wasn't doing things right, and that Straw used the "F" word continuously. Pedroza then asked for her pay check and left work early, indicating that she planned to resign. Before she left however, Anderson told her to reconsider her decision to resign over the weekend and requested her to come back on Monday.

On Monday, October 2, 2000, Pedroza told Anderson that she was being retaliated against, they weren't supporting her, she could not handle anymore of Pam's cussing and gestures, she just couldn't work around Pam anymore, and it would be best that she just did not come back to work. Pedroza never came back to work after this conversation.

On November 13, 2000, Pedroza filed complaints with the Missouri Commission on Human Rights and the Equal

Opportunity Commission. The EEOC determined that it was unable to conclude that Pedroza had been discriminated or retaliated against. Upon receiving her right to sue letter, Pedroza timely filed this action in federal court for sexual harassment, retaliation, constructive discharge, and religious discrimination.[5]

When Pedroza was hired by Cintas, the company furnished her with an employee handbook containing the following summary of its sexual harassment policy.

> Cintas prohibits sexual harassment in the workplace. Instances of sexual harassment must be reported immediately. All complaints will be investigated and disciplinary action taken when necessary.
>
> Hostile Work Environment - This more common type of sexual harassment involves verbal or physical conduct of a sexual nature that in the mind of a reasonable person

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[5]Pedroza, in her brief opposing summary judgment, states that she has now abandoned her religious discrimination claim.

> creates an intimidating, hostile, or offensive work environment. Examples include: 1. unwanted touching 2. lewd language or jokes 3. inquiries into sexual behavior 4. displaying of sexually suggestive pictures or magazines.
>
> Any incidents of sexual harassment should be reported immediately to the [employee's] supervisor, manager, or leader. If this is inappropriate for any reason, the incident should be reported to the superior of the partner's supervisor, i.e., plant manager, general manager, or any officer of the company.

This policy was explained to Straw shortly after her hire dare on June 4, 1998. During Pedroza's tenure with Cintas, the company provided annual sexual harassment training to its team leaders, supervisors, and managers. Cintas' records reveal that both Straw and Pedroza received sexual harassment training on at least two separate occasions. On September 28, 2000, Pedroza and Straw were both present for Cintas training

program regarding sexual harassment which included a video on the subject and Pedroza claims it was discussed that Straw's blowing kisses at Pedroza could relate to sexual harassment. This was the day before Pedroza's last day on the job.

Following Pedroza's termination of her employment with Cintas, she was examined by Dr. Clifford Whipple, a psychologist retained by Pedroza in this case. Dr. Whipple conducted several tests to measure Pedroza's level of intelligence. The results indicated that Pedroza scored at the bottom percentiles of all the intelligence tests, that she is a concrete person who accepts a statement literally and has difficulty perceiving sarcasm.[6] Dr. Whipple testified at his deposition that, based on his evaluation, Pedroza may

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[6]The court should also take into consideration that Pedroza was forced to drop out of school at the age of 13, after her mother remarried. Within a very short time her family moved several times; each time, to a different state. Pedroza's education ended with her completion of the seventh grade. Another element which should be examined is the fact that this time period also occurred during the late seventies; it can be assumed that the curriculum level at that time was much lower compared to that of today. These facts easily explain the results of Pedroza's intelligence and psychiatric evaluations.

misinterpret a kiss in a joking manner as something that had a sexual or passionate tone to it. Dr. Dale Halfaker, a psychologist retained by Cintas, performed similar tests and came to similar conclusions regarding Pedroza being marginally intelligent and having an inability to differentiate between sarcasm and concrete statements.

III. Discussion

A. Sex Discrimination Based on Hostile Work Environment

Title VII makes it unlawful for an employer to discriminate against an employee on the basis of, *inter alia*, the individual's sex. 42 U.S.C. § 2000e-2(a)(1). *See Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 118 S.Ct. 998, 1001, 140 L.Ed.2d 201 (1998). Sex discrimination includes creating a hostile or abusive work environment if the harassment is sufficiently abusive to affect a "term, condition, or privilege" of employment. *Meritor Sav. Bank* v. Vinson, 477 U.S.57, 66,

106 S.Ct. 2399, 2405-06, 91 L.Ed.2d 49 (1986).

To make a prima facie claim of hostile work environment sexual harassment by a nonsupervisory co-worker, the plaintiff employee must show:

> (a) that she belongs to a protected group; (b) that she was subject to unwelcome sexual harassment; (c) that the harassment was based on sex; (d) that the harassment affected a term, condition, or privilege of employment; (e) that the employer knew or should have known of the harassment and failed to take proper remedial action.

Scusa v. Nestle U.S.A. Co., Inc., 181 F.3d 958 (8th Cir. 1999)

The first element is not in dispute. To show membership in a protected group, all that is required is that the plaintiff be a man or a woman. *See Quick v. Donaldson Co., Inc.*, 90 F.3d 1372 (8th Cir. 1996) (citing *Meritor*, 477 U.S. at 66-67, 106 S.Ct. at 2405-06). Pedroza, as a female, is a member of a

protected group. As to the second element, the record reveals that Pedroza was subjected to unwelcome harassment from Straw. Harassing conduct that is "unmotivated and offensive" is considered unwelcome. *See id.* (citing *Burns v. McGregor Electronic Indus., Inc.*, 989 F.2d 959, 962 (8th Cir. 1993). Generally, determining whether certain conduct was unwelcome requires a trier of facts weighing the credibility of witnesses. *See id.* (citing *Meritor*, 577 U.S. at 68, 106 S.Ct. at 2406). Given Pedroza's statement that she objected to Straw's behavior and that the record reveals evidence of harassment, the Court cannot conclude that, as a matter of law, Pedroza has failed to meet the second element.

1. **Discrimination "Because of Sex."**

Finding that Pedroza has met the first two elements, the Court next addresses whether she has shown that Straw's harassment amounts to discrimination based on sex. In *Oncale*, the Supreme Court explained that this element of a hostile-

environment claim serves as an obstacle to plaintiffs where the alleged harasser and the plaintiff, as in the instant case, are of the same sex. *See Oncale*. 523 U.S. at 80, 118 S.Ct. 998. Whereas conduct involving explicit or implicit proposals of sexual activity directed at a person of a different sex creates an inference that the proposals would not have been made to a person of the same sex, the same is not true in same-sex harassment cases. *See id.* at 81, 118 S.Ct. 998. Stated another way, in the case of same-sex workplace sexual harassment, no presumption exists that the harassment was "because of sex." Instead, the same-sex plaintiff must demonstrate that the harassing conduct was not merely "tinged with offensive connotations," but actually constituted discrimination "because of sex". *Id.* at 79-80, 118 S.Ct. 998.

Conduct that constitutes sexual harassment includes sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. *See id.* (citing 29 C.F.R. § 1604.11(a). It is not necessary that the harassment be explicitly sexual in nature or that it have explicit sexual overtones. *See id.*

sexual in nature or that it have explicit sexual overtones. *See id.* (citing *Stacks v. Southwestern Yellow Pages, Inc.*, 27 F.3d 1316, 1326 (8th Cir. 1994); *Hall v. Gus Const. Co., Inc.*, 842 F2.d 1010, 1014 (8th Cir. 1988)). Because sexual harassment may occur in many forms, it may be evidenced by acts of verbal abuse. *See id.* (citing *Burns*, 989 F.2d at 964-65 (holding that sexual harassment can be based on vulgar and offensive epithets that were intensely degrading and insulting)).

Oncale established three ways for a plaintiff may show that the alleged harasser (1) made explicit or implicit proposals of sexual activity, coupled with (2) "credible evidence" that the harasser was homosexual. It should be noted that merely using words that have a sexual content or connotation is insufficient to show the harassment "because of sex". Second, the plaintiff may point to evidence demonstrating the harassment is framed in "such sex-specific and derogatory terms....as to make it clear that the harasser is motivated by general hostility" toward members of the same gender in the workplace...." *See Quick v.*

(citations omitted) (noting that sexual harassment may be evidenced by acts of verbal abuse); *Burns*, 989 F.2d at 964-65 (holding that sexual harassment can be based on vulgar and offensive epithets that were intensely degrading and insulting)). The third method of proof is through "direct comparative evidence about the how the alleged harasser treated members of both sexes in a mixed sex workplace. *See Oncale*, 523, U.S. at 80-81, 118 S.Ct. 998.

Pedroza asserts at page 27 of her Suggestions in Opposition that Straw's conduct amounted to sexual propositions, thus invoking *Oncale's* first method of proof. According to Pedroza, Straw's comments to Pedroza that "she wanted her" and that "I love ya" coupled with trying to kiss her on several occasions and trying ro hold her hand provides sufficient evidence to submit this question to a jury. Recent cases involving similar and much more egregious behavior, however, suggest the opposite. In *English v. Pohonka of Chantilly*, 190 F.Supp.2d 833 (E.D. Va. 2002), the court

Chantilly, 190 F.Supp.2d 833 (E.D. Va. 2002), the court granted summary judgment to an employer in a same-sex hostile environment and constructive discharge case. In that case, Dutchburn, the alleged harasser, made numerous lewd statements to the plaintiff, including telling him that "he wanted to plant his salami between [the plaintiff's] cheeks." On another occasion he told the plaintiff that they "needed to bond" and pressed his genitals against the plaintiff's shoulders. After the plaintiff told Dutchburn to stop, Dutchburn replied by stating "I love you." Dutchburn also made statements asking plaintiff whether he would like to go for a walk so they could "smoke the peace pipes." The court found that Dutchburn's lewd comments and uninvited touches did not create an inference that his conduct amounted to an "earnest sexual solicitation." Finding no "credible evidence" that Dutchburn was gay, the court held that the un-controverted facts showed that no reasonable jury could find that the harassment was "because of sex".

by the court in *Davis v. Coastal Intern. Sec., Inc.*, 275 F.3d 1119 (D.C. Cir. 2002). In *Davis*, the court found that a same-sex harasser's grabbing of his crotch, utterance of a phrase describing oral sex, and vulgar kissing gestures directed towards the plaintiff did not amount to sexual propositions. *See id.* at 1125. The court, in accord with *Oncale*, noted that the conduct must be considered in light of the "surrounding circumstances," which consisted of a high level of animosity between the plaintiff and the alleged harasser. *See id.* The court also noted that the plaintiff produced no evidence that his harasser might have been homosexual. *See id.* Consequently, the court ruled that the harasser's obscene language and gestures were not premised on sex and ultimately affirmed the district court's decision granting summary judgment to the employer. *See id.*

The Court is mindful that in examining Straw's behavior, it must not ignore the teachings of *Oncale* that: "[t]he real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships

of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed." 523 U.S. at 81-82 118 S.Ct. at 1003. In other words, contest matters and, therefore, courts must look at the harassing behavior in light of the "surrounding circumstances." The case of *Johnson v. Hondo, Inc.*, 125 F.3d 408 (7th Cir. 1997) is instructive in ensuring that the harassment is not considered in a vacuum. In *Johnson*, the Seventh Circuit held that a male employee's claim that a male co-worker, inspired by a long history of mutual dislike, tormented him with a series of sexually explicit comments accompanied by lewd gestures "failed to raise a triable issue as to whether [the harasser's] comments were because of the [the plaintiff's] gender" *See id.* at 412. The court reasoned that:

> Most unfortunately, expression such [as]...."kiss my ass' and [other obscene statements] are commonplace in certain circles, and more often than not, when these expressions are used...., their use has no connection

> reference-even when they are accompanied, as they sometimes were here, with a crotch-grabbing gesture. Ordinarily, they are simply expressions of animosity or juvenile provocation.....
>
> *Id.*

In examining the un-controverted evidence along with Pedroza's version of the events, the Court is unable to find any evidence that raises an inference that Straw's behavior amounted to a sexual proposition. To the contrary, the un-controverted facts reveal that Straw's treatment of Pedroza was premised on a pre-existing dislike of her in similar fashion as in *Davis*. For instance, several of Pedroza's co-workers testified in their respective depositions that Pedroza and Straw had conflicting personalities. Anna Mae Lindsay, a friend of and co-worker of Pedroza, testified in her deposition that she observed Straw criticize Pedroza for not being a good team leader. Lindsey also heard Straw make remarks that she simply did not like Pedroza. These critical remarks, it should be noted, began

prior to the time that Pedroza alleges that the alleged harassment began. The personality conflict is further illuminated by Pedroza' s complaints to her supervisor Watkins in late July or early August 2000 that Straw's use of foul language offended her. Finally, Pedroza herself recognizes that there existed a personality conflict between her and st. While at the August 30, 2000 meeting with her supervisor Watkins, plant manager Smith, and human resource manager Braker, a meeting which Pedroza secretly tape recorded, Pedroza reported that her big problem with Straw was their poor communication and inability to work together as a team. At no time during this meeting did Pedroza mention Straw's attempts to kiss her, blowing of kisses, or any other complained of behavior initiated by st.

The lack of any evidence that Straw is a lesbian further demonstrates that Straw's actions did not constitute an actual sexual proposition. In her deposition, Pedroza testified that she has no facts causing her to believe that Straw is or has ever been a lesbian. No evidence has been proffered that Straw ever asked

Pedroza for a date or any other type of sexual relationship. Furthermore, Straw's affidavit affirmatively states that she, as a mother of five children and partner in a long-term heterosexual relationship, is not a lesbian, nor has she ever engaged in sexual relations with another woman. While Pedroza points to vague comments made by Straw such as "I want you, honey," "I love you," and "kiss my ass," such comments, as noted in *Johnson*, more often than not have no connection to the sexual acts to which they make reference, even when the comments are accompanied by lewd kissing gestures. A good example of this was Straw's remarks to Pedroza that "I love you, honey" which were made immediately following Pedroza's agreement to allow members of her team provide additional help to Straw's team. Proper context indicates that these remarks were more likely than not a form of gratitude rather than a sexual solicitation.

The same is true regarding the "little nips" and "nanny, nanny, nanny" comments complained of by Pedroza. As to the "little nips" comment, the records reveals that the only uttering

of this phrase was made by Pedroza during her August 30, 2000 meeting with Smith and Braker, one of the meetings secretly tape recorded by Pedroza. At the meeting, Pedroza stated that "it's just the continuance little nips and it's just, it's uncalled for." Pedroza never alleges that she was called "little nips" by st. It appears most likely this was a reference to incidents of conflict considered to be "nitpicky" by Pedroza. And when viewing the "nanny, nanny, nanny" comments in proper context, it is hard to imagine this as anything more than juvenile provocation.

Pedroza contends that Straw's actions alone are sufficient to create an inference as to her sexual orientation, and thus, the issue is a jury question. However, in the few cases that have inferred the harasser's homosexuality from the underlying facts, the conduct complained of went "far beyond the casual obscenity" *Shepard v. Slater Steels Corp.*, 168 F.3d 998, 1010 (7th Cir. 1999) (finding that a reasonable jury could find that the harasser was gay where he made numerous explicit comments

concerning homosexual acts, exposed his genitals approximately four to five times weekly to the plaintiff, and "rubbed himself" into an erection as he threatened to sexually assault the plaintiff").

In sum, viewing the evidence in the light most favorable to Pedroza convinces the Court that it is insufficient to show that Straw's behavior was directed at her "because of sex." When viewing Straw's behavior in its proper context, Straw's conduct amounts to a rude form of teasing motivated by a mutual dislike rather an earnest sexual solicitation. Moreover, no "credible evidence exists" that Straw is a lesbian. Additionally, there is no evidence nor does Pedroza contend that Straw treated other women the same as Pedroza, thus ruling out any inferences that Straw displayed a general hostility to females in the workplace. *See Oncale*, 523 U.S. at 80-81, 118 S.Ct. 998. Finally, *Oncale's* third method of proof is not met as Pedroza has not offered or alleged any direct comparative evidence about Straw's treatment of men and women. *See id.*

B. Severe and Pervasive

Plaintiff also has failed to demonstrate that the harassment was "permeated with discriminatory intimidation, ridicule, and insult, thus failing the fourth element of submitting a prima facie hostile environment claim. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993) (internal quotations omitted). "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment-an environment that a reasonable person would find hostile or abusive-is beyond Title VII's purview." *Oncale*, 523 U.S.. at 81, 118 S.Ct. 998 (internal quotations omitted). By this language, the Supreme Court has set fourth an objective and subjective component in hostile wiork environment cases; an environment that the plaintiff believes is abusive and an environment that a reasonable person would perceive as hostile. *See Duncan v. General Motors Corp.*, 300, F.3d 928 (8th Cir. 2002).

Determining whether or not the alleged harassment is severe and pervasive requires examining the totality of circumstances surrounding the discriminatory conduct. *See id.* at 934 (citations omitted). Factors include "the frequency of the discriminatory conduct, it's severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris*, 510 U.S. at 23, 114 S.Ct. 17. Caution must be noted that Title VII is "not designated to purge the workplace of vulgarity," *id.* (quoting *Baskerville v. Culligan Int'; Co.*, 50 F.3d 428, 430 (7th Cir. 1995). Stated another way, Title VII is not a civility code, and thus, simple teasing, offhand comments, and non-serious isolated incidents are not severe and pervasive. *See Faragher v. City of Boca Raton*, 524 U.S. 775, 788, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998) (citing *Oncale*, 523 U.S. at 81, 118 S.Ct. 998, *see also Scusa v. Nestle U.S.A. Co., Inc.*, 181 F.3d 958 (8th Cir. 1999) (commenting that Title VII was not designated as a federal remedy for offensive

language in the workplace.

It is clear from the record that Pedroza personally was offended by Straw's conduct, and thus, satisfies the subjective part of the test. The inquiry, however, must proceed as Straw's conduct must also be offensive to a reasonable person. Accordingly, the Court should examine all the actions complained of and ask whether, based on the controverted and un-controverted facts, a jury could find that a reasonable person would perceive Straw's actions as hostile.

Although not totally supported by the statements of facts, Pedroza, in her suggestions in opposition to the motion for summary judgment, claims the following alleged events support her hostile environment claim (page 27 Plaintiff Suggestions):

> ....kissed Plaintiff at least three times, put saliva on Plaintiff's cheek, grabbed her, rubbed her butt at her on a frequent basis, followed Plaintiff into her work area where she would not need to be for work, blew kisses at

her on almost a daily basis, and used sexual comments and profanity directed at the Plaintiff on a frequent basis for over four months.

Pam Straw even asked Plaintiff if she 'got a piece of ass' the precious night.

These facts, however, are below the baseline of actionable conduct that the Eight Circuit as well as other circuit courts, have found to create a hostile environment. For example, in *Duncan*, the Eighth Circuit held that a male supervisor's harassing behavior was not sufficiently severe and pervasive so as to subject the female plaintiff to a hostile working environment. 300 F.3d at 934-35. The supervisor's behavior involved him requesting a sexual relationship from the plaintiff, touching her hand on several occasions, asking plaintiff to draw a picture of his planter that depicted a hole in the front of a man's pants in which protruded a cactus, displaying a pacifier shaped like a penis, and a computer screen with a picture of a naked woman, displaying a poster depicting plaintiff

as the ?President and CEO of the Man Haters Club of America" together with a statement that plaintiff must also be in control of sex, and asking plaintiff to draft the beliefs of the "He-Man Woman Hater's Club." *See id.* at 933.

In finding the harassment insufficient to support a Title VII claim for hostile environment, the *Duncan* court cited to numerous cases that have rejected hostile work environment claims premised upon facts equally egregious than the conduct at issue here. *See id.* at 934-35 (citing *Shepherd v. Comptroller of Pub., Accounts*, 168 F.3d 871, 872-74 (5th Cir. 1999) (holding that several incidents over a two-year period, including the comment "your elbows are the same color as your nipples," another comment that plaintiff had big thighs, repeated touching of the plaintiff's arm, and attempts to look down plaintiff's dress, did not constitute a prima facie hostile work environment claim), cert. denied, 528 U.S. 963, 120 S.Ct. 395, 145 L.Ed2d (1999); *Adusumilli v. City of Chicago*, 164 F.3d 353, 357, 361-62 (7th Cir. 1998) (finding harassing conduct insufficient to

support hostile environment claim when employee teased plaintiff, made sexual jokes aimed at her, told her not to wave at police officers "because people would think she was a prostitute," commented about low-neck tops, stared at her breasts, and touched her buttocks, finger, and arms on four occasions), cert. denied, 528 U.S. 988, 120 S.Ct. 450, 145 L.Ed.2d 367 (1999); *Black v. Zaring Homes, Inc.*, 104 F.3d 822, 823-24, 826 (6th Cir. 1997) (reversing jury verdict and holding behavior merely offensive and insufficient to support hostile environment claim when employee reached across plaintiff, stating "[n]othing I like more in the morning than sticky buns" while staring at her suggestively, suggested to plaintiff that parcel of land be named "Hootersville," "Titsville," or "Twin Peaks," and asked "weren't you there Saturday night dancing on the tables?" while discussing property near a biker bar), cert. denied, 522 U.S. 865, 118 S.Ct. 172, 139 L.Ed.2d 114 (1997); *Weiss v. Coca-Cola Bottling Co.*, 990 F.2d 333, 337 (7th Cir. 1993) (holding no sexual harassment when

plaintiff's supervisor asked plaintiff for dates, asked about her personal life, called her a "dumb blond," put his hand on her shoulder several times, placed "I love you" signs at her work station, and attempted to kiss her twice at work and once in a bar.)).

An instructive decision containing similar facts to the present case is *Hartfield v. Pizza Inn, Inc.*, No. CIV.A. 02-0097 2002 WL 31056595 (E.D.La. 9-13-2002). In *Hartfield*, a female employee complained that a male co-worker harassed her over a six month period. According to the plaintiff, the co-worker kissed her once on the cheek while she was working and alleged that he would have kissed her lips if she had not turned her head. Other instances of harassment involved the co-worker's unwanted touching of her buttocks three or four times; an attempt to hug and kiss th plaintiff in a cooler, blowing of kisses at the plaintiff, and statements that he liked the way the plaintiff walked. The court found that the co-worker's behavior was ill-mannered and vulgar, but concluded that, as a matter of

law, the conduct was insufficiently severe or pervasive to create a hostile working environment."

The Eighth Circuit's decision in *Duncan* together with recent decisions from other jurisdictions illustrates the demanding standards set forth by the federal courts in making a prima facie hostile environment sexual harassment case. Moreover, these standards are in line with *Oncale's* mandate that Title VII is not a general civility code designed to purge all forms of vulgarity from the workplace. Therefore, in light of *Duncan* and other cases cited herein, the Court finds that Straw's behavior was insufficiently severe or pervasive to create a hostile working environment. Accordingly, summary judgment is granted in favor of defendant Cintas on Pedroza's hostile work environment claim contained in Count I and Count II of her First Amended Complaint (Doc. #28).

B. Retaliation

Pedroza also asserts a claim for violation of the Missouri Human Rights Act, §213.010, et seq. alleging that

Cintas retaliated against her for complaining of Straw's harassing conduct and for constructive discharge. To establish a claim of retaliation, appellant had to show that (1) she filed charge of harassment or engaged in other protected activity; (2) her employer subsequently Defendant Cintas on Pedroza's claim for retaliation contained in Count I and Count II of her First Amended Complaint (Doc. #28)

C. **Constructive Discharge**

The undisputed facts also show that Cintas did not constructively discharge Pedroza. To show "constructive discharge, a plaintiff must show more than just a Title VII violation by her employer." *Breeding v. Arthur J. Gallagher amd Co.*, 164 F.3d 1151, 1159 (8th Cir. 1999) (quoting *Phillips v. Taco Bell Corp.*, 156 F.3d 884, 890 (8th Cir. 1998)). "A constructive discharge occurs when the employer renders the employee's working conditions intolerable, forcing the employee to quit." Id. (quoting *Johnson v. Runyon*, 137 F.3d 1081, 1083

(8th Cir.) (internal quotations omitted), cert. denied, 525 U.S. 916, 119 S.Ct. 264, 142 L.Ed2d 217 (1998). "To constitute a constructive discharge, the employer must deliberately create intolerable working conditions with the intention of forcing the employee to quit and the employee must quit." Id. (quoting *Summit v. S-B Power Tool,* 121 F.3d 416, 421 (8th Cir. 1997) (internal quotaitons omitted), cert. denied, 523 U.S. 1004, 118 S.Ct. 1185, 140 L.Ed.2d 316 (1996). The intent element is satisfied by a demonstration that quitting was "a reasonably foreseeable consequences of the employer's discriminatory actions." *Id.* The employer has an obligation to act reasonably by not jumping to conclusions too quickly. *Id. See also Howard v. Burns Bros., Inc.*, 149 F.3d 835, 841-42 (8th Cir. 1998) (discussing recent cases defining what type of conditions are intolerable for purposes of constructive discharge).

A constructive discharge arises only when a reasonable person would find the conditions of employment intolerable. *See Tidwell v. Meyer's Bakeries Inc.*, 93 F.3d 490, 494 (8th Cir.

1996) (citations omitted). In *Tidwell*, an employee who worked in an environment that was "tinged with discriminatory acts" was nevertheless not constructively discharged, because the area was not so severe that a reasonable person would have found them intolerable. Id at 497. By finding that the plaintiff was not constructively discharged despite being subjected to sexual harassment, the *Tidwell* courts reinforced the principle that constructive discharge claims cannot simply be piggy-backed on sexual harassment claims.

Although Pedroza has submitted evidence showing that she was subjected to harassing conduct from her co-worker and that, despite her complaints, the conduct continued, this Court has found that the co-worker's behavior was not so severe and pervasive as to constitute a hostile working environment. As noted by the Fourth Circuit, "a feeling of .....[having to endure] difficult or unpleasant working conditions are not so intolerable as to compel a reasonable person to resign." *Carter v. Ball*, 33 G.3d 450, 459 (4th Cir. 1994). Furthremore, no evidence exists

that Pedroza was demoted, denied a promotion, or suffered any adverse employment action by Cintas. Accordingly, summary judgment is granted in favor of Defendant Cintas on Pedroza's claim for constructive discharge contained in Count I and Count II of her First Amended Complaint (Doc.# 28).

D. Religious Discrimination

Cintas has also moved for summary judgment on Pedroza's claim of religious discrimination. This was based on Plaintiff's claim that Defendant failed to take Plaintiff's complaints seriously because Defendant felt she was too sensitive due to her Jehovah's Witness religious beliefs. In response to Defendant's motion for summary judgment on this claim, Pedroza states that she has abandoned this claim and offers no response to refuse Cintas' arguments that no evidence exists showing that Cintas pr any of it's employees discriminated against Pedroza on the basis of her religion. In light of the absence of any such evidence coupled with Pedroza's desire to abandon this claim, summary judgment is granted on Pedroza's

claim for religious discrimination contained in Count II of her First Amended Complaint (Doc.# 28).

E. Punitive Damages

Pedroza's final claim is for punitive damages. Because the Court has granted summary judgment in favor of Cintas and against Pedroza on all of Pedroza's underlying claims as set forth above, there remains no claim upon which Pedroza could be award punitive damages. Therefore, summary judgment will is also granted to Cintas on Pedroza's claim for punitive damages sought under both Title VII and the MHRA.

I. Conclusion

For the reasons given above, Defendant Cintas Motion for Summary Judgment (Doc.# 65) is granted. Specifically, Cintas is granted summary judgment in favor of Defendant Cintas and against Plaintiff Pedroza on all claims of sexual harassment , hostile work environment, retaliation, religious discrimination, constructive discharge and punitive damages as contained in Counts I and II in Plaintiff's First Amended

Complaint (Doc.# 28).

IT IS SO ORDERED

DATE: January 9, 2003

Richard E. Dorr

United States District Judge

VIENNA DECLARATION AND PROGRAMME OF ACTION (1993)

The World Conference on Human Rights, Considering that the promotion and protection of human rights is a matter of priority for the international community, and that the Conference affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and

balanced manner,

Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms,

Reaffirming their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights,

Reaffirming the commitment contained in Article 56 of the Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55, including universal respect for, and observance of, human rights and fundamental freedoms for all,

Emphasizing the responsibilities of all States, in conformity with

the Charter of the United Nations, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Recalling the Preamble to the Charter of the United Nations, in particular the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and of nations large and small,

Recalling also the determination expressed in the Preamble of the Charter of the United Nations to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighbourliness, and to employ international machinery for the promotion of the economic and social advancement of all

peoples,

Emphasizing that the Universal Declaration of Human Rights, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Considering the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self - determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity,

Deeply concerned by various forms of discrimination and violence, to which women continue to be exposed all over the world,

Recognizing that the activities of the United Nations in the field of human rights should be rationalized and enhanced in order to strengthen the United Nations machinery in this field and to further the objectives of universal respect for observance of international human rights standards,

Having taken into account the Declarations adopted by the three regional meetings at Tunis, San Josi and Bangkok and the contributions made by Governments, and bearing in mind the suggestions made by intergovernmental and non-governmental organizations, as well as the studies prepared by independent experts during the preparatory process leading to the World Conference on Human Rights,

Welcoming the International Year of the World's Indigenous People 1993 as a reaffirmation of the commitment of the

international community to ensure their enjoyment of all human rights and fundamental freedoms and to respect the value and diversity of their cultures and identities,

Recognizing also that the international community should devise ways and means to remove the current obstacles and meet challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting thereof throughout the world,

Invoking the spirit of our age and the realities of our time which call upon the peoples of the world and all States Members of the United Nations to rededicate themselves to the global task of promoting and protecting all human rights and fundamental freedoms so as to secure full and universal enjoyment of these rights,

Determined to take new steps forward in the commitment of the international community with a view to achieving substantial progress in human rights endeavours by an increased and

sustained effort of international cooperation and solidarity,

Solemnly adopts the Vienna Declaration and Programme of Action.

I

1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

In this framework, enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations.

Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

2. All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.

In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the

territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self- determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

3. Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 14 August 1949, and other applicable norms of humanitarian law.

4. The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and

principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community. The organs and specialized agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international human rights instruments.

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

6. The efforts of the United Nations system towards the universal respect for, and observance of, human rights and fundamental freedoms for all, contribute to the stability and well-being necessary for peaceful and friendly relations among nations, and to improved conditions for peace and security as well as social and economic development, in conformity with the Charter of the United Nations.

7. The processes of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter of the United Nations, and international law.

8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection

of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

9. The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratization and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development.

10. The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to Development, the

human person is the central subject of development.

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.

States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.

11. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous

substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.

Consequently, the World Conference on Human Rights calls on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping.

Everyone has the right to enjoy the benefits of scientific progress and its applications. The World Conference on Human Rights notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual, and calls for international cooperation to ensure that human rights and dignity are fully respected in this area of universal concern

12. The World Conference on Human Rights calls upon the international community to make all efforts to help alleviate the

external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people.

13. There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights.

14. The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community.

15. Respect for human rights and for fundamental freedoms without distinction of any kind is a fundamental rule of international human rights law. The speedy and comprehensive

elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a priority task for the international community. Governments should take effective measures to prevent and combat them. Groups, institutions, intergovernmental and non-governmental organizations and individuals are urged to intensify their efforts in cooperating and coordinating their activities against these evils.

16. The World Conference on Human Rights welcomes the progress made in dismantling apartheid and calls upon the international community and the United Nations system to assist in this process.

The World Conference on Human Rights also deplores the continuing acts of violence aimed at undermining the quest for a peaceful dismantling of apartheid.

17. The acts, methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human

rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments. The international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.

18. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action

and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

19. Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live,

The World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and

fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The persons belonging to minorities have the right to enjoy their own culture, to profess and practise their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination.

20. The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development. States should ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them. Considering the importance of the promotion and

protection of the rights of indigenous people, and the contribution of such promotion and protection to the political and social stability of the States in which such people live, States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non- discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization.

21. The World Conference on Human Rights, welcoming the early ratification of the Convention on the Rights of the Child by a large number of States and noting the recognition of the human rights of children in the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, urges universal ratification of the Convention by 1995 and its effective implementation by States parties through the adoption of all the

necessary legislative, administrative and other measures and the allocation to the maximum extent of the available resources. In all actions concerning children, non-discrimination and the best interest of the child should be primary considerations and the views of the child given due weight. National and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular, the girl-child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children, children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies. International cooperation and solidarity should be promoted to support the implementation of the Convention and the rights of the child should be a priority in the United Nations system-wide action on human rights.

The World Conference on Human Rights also stresses that the child for the full and harmonious development of his or her personality should grow up in a family environment which accordingly merits broader protection.

22. Special attention needs to be paid to ensuring non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.

23. The World Conference on Human Rights reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution, as well as the right to return to one's own country. In this respect it stresses the importance of the Universal Declaration of Human Rights, the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and regional instruments. It expresses its appreciation to States that continue to admit and host large numbers of refugees in their territories, and to the

Office of the United Nations High Commissioner for Refugees for its dedication to its task. It also expresses its appreciation to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

The World Conference on Human Rights recognizes that gross violations of human rights, including in armed conflicts, are among the multiple and complex factors leading to displacement of people.

The World Conference on Human Rights recognizes that, in view of the complexities of the global refugee crisis and in accordance with the Charter of the United Nations, relevant international instruments and international solidarity and in the spirit of burden-sharing, a comprehensive approach by the international community is needed in coordination and cooperation with the countries concerned and relevant organizations, bearing in mind the mandate of the United Nations High Commissioner for Refugees. This should include

the development of strategies to address the root causes and effects of movements of refugees and other displaced persons, the strengthening of emergency preparedness and response mechanisms, the provision of effective protection and assistance, bearing in mind the special needs of women and children, as well as the achievement of durable solutions, primarily through the preferred solution of dignified and safe voluntary repatriation, including solutions such as those adopted by the international refugee conferences. The World Conference on Human Rights underlines the responsibilities of States, particularly as they relate to the countries of origin.

In the light of the comprehensive approach, the World Conference on Human Rights emphasizes the importance of giving special attention including through intergovernmental and humanitarian organizations and finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation.

In accordance with the Charter of the United Nations and the principles of humanitarian law, the World Conference on Human Rights further emphasizes the importance of and the need for humanitarian assistance to victims of all natural and man-made disasters.

24. Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments. States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems.

25. The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.

26. The World Conference on Human Rights welcomes the progress made in the codification of human rights instruments, which is a dynamic and evolving process, and urges the universal ratification of human rights treaties. All States are encouraged to accede to these international instruments; all

States are encouraged to avoid, as far as possible, the resort to reservations.

27. Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice.

28. The World Conference on Human Rights expresses its dismay at massive violations of human rights especially in the form of genocide, "ethnic cleansing" and systematic rape of women in war situations, creating mass exodus of refugees and displaced persons. While strongly condemning such abhorrent practices it reiterates the call that perpetrators of such crimes be punished and such practices immediately stopped.

29. The World Conference on Human Rights expresses grave concern about continuing human rights violations in all parts of the world in disregard of standards as contained in international human rights instruments and international humanitarian law and about the lack of sufficient and effective remedies for the victims.

The World Conference on Human Rights is deeply concerned about violations of human rights during armed conflicts, affecting the civilian population, especially women, children, the elderly and the disabled. The Conference therefore calls upon

States and all parties to armed conflicts strictly to observe international humanitarian law, as set forth in the Geneva Conventions of 1949 and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in international conventions.

The World Conference on Human Rights reaffirms the right of the victims to be assisted by humanitarian organizations, as set forth in the Geneva Conventions of 1949 and other relevant instruments of international humanitarian law, and calls for the safe and timely access for such assistance.

30. The World Conference on Human Rights also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances,

arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.

31. The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure.

32. The World Conference on Human Rights reaffirms the

importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues.

33. The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the

promotion and respect of human rights with regard to all individuals without distinction of any kind such as race, sex, language or religion, and this should be integrated in the education policies at the national as well as international levels. The World Conference on Human Rights notes that resource constraints and institutional inadequacies may impede the immediate realization of these objectives.

34. Increased efforts should be made to assist countries which so request to create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms. Governments, the United Nations system as well as other multilateral organizations are urged to increase considerably the resources allocated to programmes aiming at the establishment and strengthening of national legislation, national institutions and related infrastructures which uphold the rule of law and democracy, electoral assistance, human rights awareness through training, teaching and education, popular participation

and civil society.

The programmes of advisory services and technical cooperation under the Centre for Human Rights should be strengthened as well as made more efficient and transparent and thus become a major contribution to improving respect for human rights. States are called upon to increase their contributions to these programmes, both through promoting a larger allocation from the United Nations regular budget, and through voluntary contributions.

35. The full and effective implementation of United Nations activities to promote and protect human rights must reflect the high importance accorded to human rights by the Charter of the United Nations and the demands of the United Nations human rights activities, as mandated by Member States. To this end, United Nations human rights activities should be provided with increased resources.

36. The World Conference on Human Rights reaffirms the

important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.

37. Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at

the same time stressing the importance of cooperation with the United Nations human rights activities.

The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist.

38. The World Conference on Human Rights recognizes the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at national, regional and international levels. The World Conference on Human Rights appreciates their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field, and to the promotion and protection of all human rights and fundamental freedoms. While recognizing that the primary responsibility for standard-setting lies with States, the conference also appreciates the contribution of non-

governmental organizations to this process. In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and cooperation between Governments and non-governmental organizations. Non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of the national law. These rights and freedoms may not be exercised contrary to the purposes and principles of the United Nations. Non-governmental organizations should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.

39. Underlining the importance of objective, responsible and impartial information about human rights and humanitarian issues, the World Conference on Human Rights encourages the increased involvement of the media, for whom freedom and

protection should be guaranteed within the framework of national law.

II

A. Increased coordination on human rights within the United Nations system

1. The World Conference on Human Rights recommends increased coordination in support of human rights and fundamental freedoms within the United Nations system. To this end, the World Conference on Human Rights urges all United Nations organs, bodies and the specialized agencies whose activities deal with human rights to cooperate in order to strengthen, rationalize and streamline their activities, taking into account the need to avoid unnecessary duplication. The World Conference on Human Rights also recommends to the Secretary-General that high-level officials of relevant United Nations bodies and specialized agencies at their annual meeting, besides coordinating their activities, also assess the impact of

their strategies and policies on the enjoyment of all human rights.

2. Furthermore, the World Conference on Human Rights calls on regional organizations and prominent international and regional finance and development institutions to assess also the impact of their policies and programmes on the enjoyment of human rights.

3. The World Conference on Human Rights recognizes that relevant specialized agencies and bodies and institutions of the United Nations system as well as other relevant intergovernmental organizations whose activities deal with human rights play a vital role in the formulation, promotion and implementation of human rights standards, within their respective mandates, and should take into account the outcome of the World Conference on Human Rights within their fields of competence.

4. The World Conference on Human Rights strongly

recommends that a concerted effort be made to encourage and facilitate the ratification of and accession or succession to international human rights treaties and protocols adopted within the framework of the United Nations system with the aim of universal acceptance. The Secretary-General, in consultation with treaty bodies, should consider opening a dialogue with States not having acceded to these human rights treaties, in order to identify obstacles and to seek ways of overcoming them.

5. The World Conference on Human Rights encourages States to consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them.

6. The World Conference on Human Rights, recognizing the

need to maintain consistency with the high quality of existing international standards and to avoid proliferation of human rights instruments, reaffirms the guidelines relating to the elaboration of new international instruments contained in General Assembly resolution 41/120 of 4 December 1986 and calls on the United Nations human rights bodies, when considering the elaboration of new international standards, to keep those guidelines in mind, to consult with human rights treaty bodies on the necessity for drafting new standards and to request the Secretariat to carry out technical reviews of proposed new instruments.

7. The World Conference on Human Rights recommends that human rights officers be assigned if and when necessary to regional offices of the United Nations Organization with the purpose of disseminating information and offering training and other technical assistance in the field of human rights upon the request of concerned Member States. Human rights training for

international civil servants who are assigned to work relating to human rights should be organized.

8. The World Conference on Human Rights welcomes the convening of emergency sessions of the Commission on Human Rights as a positive initiative and that other ways of responding to acute violations of human rights be considered by the relevant organs of the United Nations system.

Resources

9. The World Conference on Human Rights, concerned by the growing disparity between the activities of the Centre for Human Rights and the human, financial and other resources available to carry them out, and bearing in mind the resources needed for other important United Nations programmes, requests the Secretary-General and the General Assembly to take immediate steps to increase substantially the resources for the human rights programme from within the existing and future regular budgets of the United Nations, and to take urgent steps

to seek increased extrabudgetary resources.

10. Within this framework, an increased proportion of the regular budget should be allocated directly to the Centre for Human Rights to cover its costs and all other costs borne by the Centre for Human Rights, including those related to the United Nations human rights bodies. Voluntary funding of the Centre's technical cooperation activities should reinforce this enhanced budget; the World Conference on Human Rights calls for generous contributions to the existing trust funds.

11. The World Conference on Human Rights requests the Secretary- General and the General Assembly to provide sufficient human, financial and other resources to the Centre for Human Rights to enable it effectively, efficiently and expeditiously to carry out its activities.

12. The World Conference on Human Rights, noting the need to ensure that human and financial resources are available to carry out the human rights activities, as mandated by

intergovernmental bodies, urges the Secretary-General, in accordance with Article 101 of the Charter of the United Nations, and Member States to adopt a coherent approach aimed at securing that resources commensurate to the increased mandates are allocated to the Secretariat. The World Conference on Human Rights invites the Secretary-General to consider whether adjustments to procedures in the programme budget cycle would be necessary or helpful to ensure the timely and effective implementation of human rights activities as mandated by Member States.

Centre for Human Rights

13. The World Conference on Human Rights stresses the importance of strengthening the United Nations Centre for Human Rights.

14. The Centre for Human Rights should play an important role in coordinating system-wide attention for human rights. The focal role of the Centre can best be realized if it is enabled to

cooperate fully with other United Nations bodies and organs. The coordinating role of the Centre for Human Rights also implies that the office of the Centre for Human Rights in New York is strengthened.

15. The Centre for Human Rights should be assured adequate means for the system of thematic and country rapporteurs, experts, working groups and treaty bodies. Follow-up on recommendations should become a priority matter for consideration by the Commission on Human Rights.

16. The Centre for Human Rights should assume a larger role in the promotion of human rights. This role could be given shape through cooperation with Member States and by an enhanced programme of advisory services and technical assistance. The existing voluntary funds will have to be expanded substantially for these purposes and should be managed in a more efficient and coordinated way. All activities should follow strict and transparent project management rules and regular programme

and project evaluations should be held periodically. To this end, the results of such evaluation exercises and other relevant information should be made available regularly. The Centre should, in particular, organize at least once a year information meetings open to all Member States and organizations directly involved in these projects and programmes.

Adaptation and strengthening of the United Nations machinery for human rights, including the question of the establishment of a United Nations High Commissioner for Human Rights

17. The World Conference on Human Rights recognizes the necessity for a continuing adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights, as reflected in the present Declaration and within the framework of a balanced and sustainable development for all people. In particular, the United Nations human rights organs should improve their coordination, efficiency and effectiveness.

18. The World Conference on Human Rights recommends to the General Assembly that when examining the report of the Conference at its forty-eighth session, it begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.

B. Equality, dignity and tolerance

1. Racism, racial discrimination, xenophobia and other forms of intolerance

19. The World Conference on Human Rights considers the elimination of racism and racial discrimination, in particular in their institutionalized forms such as apartheid or resulting from doctrines of racial superiority or exclusivity or contemporary forms and manifestations of racism, as a primary objective for the international community and a worldwide promotion programme in the field of human rights. United Nations organs and agencies should strengthen their efforts to implement such

a programme of action related to the third decade to combat racism and racial discrimination as well as subsequent mandates to the same end. The World Conference on Human Rights strongly appeals to the international community to contribute generously to the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination.

20. The World Conference on Human Rights urges all Governments to take immediate measures and to develop strong policies to prevent and combat all forms and manifestations of racism, xenophobia or related intolerance, where necessary by enactment of appropriate legislation, including penal measures, and by the establishment of national institutions to combat such phenomena.

21. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to appoint a Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The World

Conference on Human Rights also appeals to all States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to consider making the declaration under article 14 of the Convention.

22. The World Conference on Human Rights calls upon all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including the desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion. The Conference also invites all States to put into practice the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

23. The World Conference on Human Rights stresses that all persons who perpetrate or authorize criminal acts associated

with ethnic cleansing are individually responsible and accountable for such human rights violations, and that the international community should exert every effort to bring those legally responsible for such violations to justice.

24. The World Conference on Human Rights calls on all States to take immediate measures, individually and collectively, to combat the practice of ethnic cleansing to bring it quickly to an end. Victims of the abhorrent practice of ethnic cleansing are entitled to appropriate and effective remedies.

2. Persons belonging to national or ethnic, religious and linguistic minorities

25. The World Conference on Human Rights calls on the Commission on Human Rights to examine ways and means to promote and protect effectively the rights of persons belonging to minorities as set out in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. In this context, the World Conference on

Human Rights calls upon the Centre for Human Rights to provide, at the request of Governments concerned and as part of its programme of advisory services and technical assistance, qualified expertise on minority issues and human rights, as well as on the prevention and resolution of disputes, to assist in existing or potential situations involving minorities.

26. The World Conference on Human Rights urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities in accordance with the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

27. Measures to be taken, where appropriate, should include facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country.

Indigenous people

28. The World Conference on Human Rights calls on the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to complete the drafting of a declaration on the rights of indigenous people at its eleventh session.

29. The World Conference on Human Rights recommends that the Commission on Human Rights consider the renewal and updating of the mandate of the Working Group on Indigenous Populations upon completion of the drafting of a declaration on the rights of indigenous people.

30. The World Conference on Human Rights also recommends that advisory services and technical assistance programmes within the United Nations system respond positively to requests by States for assistance which would be of direct benefit to indigenous people. The World Conference on Human Rights further recommends that adequate human and financial resources be made available to the Centre for Human Rights

within the overall framework of strengthening the Centre's activities as envisaged by this document.

31. The World Conference on Human Rights urges States to ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them.

32. The World Conference on Human Rights recommends that the General Assembly proclaim an international decade of the world's indigenous people, to begin from January 1994, including action- orientated programmes, to be decided upon in partnership with indigenous people. An appropriate voluntary trust fund should be set up for this purpose. In the framework of such a decade, the establishment of a permanent forum for indigenous people in the United Nations system should be considered.

Migrant workers

33. The World Conference on Human Rights urges all States to guarantee the protection of the human rights of all migrant

workers and their families.

34. The World Conference on Human Rights considers that the creation of conditions to foster greater harmony and tolerance between migrant workers and the rest of the society of the State in which they reside is of particular importance.

35. The World Conference on Human Rights invites States to consider the possibility of signing and ratifying, at the earliest possible time, the International Convention on the Rights of All Migrant Workers and Members of Their Families.

3. The equal status and human rights of women

36. The World Conference on Human Rights urges the full and equal enjoyment by women of all human rights and that this be a priority for Governments and for the United Nations. The World Conference on Human Rights also underlines the importance of the integration and full participation of women as both agents and beneficiaries in the development process, and reiterates the objectives established on global action for women

towards sustainable and equitable development set forth in the Rio Declaration on Environment and Development and chapter 24 of Agenda 21, adopted by the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 3-14 June 1992).

37. The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms. In particular, steps should be taken to increase cooperation and promote further integration of objectives and goals between the Commission on the Status of Women, the Commission on Human Rights, the Committee for the Elimination of Discrimination against Women, the United Nations Development Fund for Women, the United Nations Development Programme and other United Nations agencies. In this context, cooperation and coordination should be

strengthened between the Centre for Human Rights and the Division for the Advancement of Women.

38. In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including

in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.

39. The World Conference on Human Rights urges the eradication of all forms of discrimination against women, both hidden and overt. The United Nations should encourage the goal of universal ratification by all States of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000. Ways and means of addressing the particularly large number of reservations to the Convention should be encouraged. Inter alia, the Committee on the Elimination of Discrimination against Women should continue its review of reservations to the Convention. States are urged to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law.

40. Treaty monitoring bodies should disseminate necessary information to enable women to make more effective use of

existing implementation procedures in their pursuits of full and equal enjoyment of human rights and non-discrimination. New procedures should also be adopted to strengthen implementation of the commitment to women's equality and the human rights of women. The Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to consider the appointment of a special rapporteur on violence against women at its fiftieth session.

41. The World Conference on Human Rights recognizes the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life span. In the context of the World Conference on Women and the

Convention on the Elimination of All Forms of Discrimination against Women, as well as the Proclamation of Tehran of 1968, the World Conference on Human Rights reaffirms, on the basis of equality between women and men, a woman's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels.

42. Treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data. States should be encouraged to supply information on the situation of women de jure and de facto in their reports to treaty monitoring bodies. The World Conference on Human Rights notes with satisfaction that the Commission on Human Rights adopted at its forty-ninth session resolution 1993/46 of 8 March 1993 stating that rapporteurs and working groups in the field of human rights should also be encouraged to do so. Steps should also be taken

by the Division for the Advancement of Women in cooperation with other United Nations bodies, specifically the Centre for Human Rights, to ensure that the human rights activities of the United Nations regularly address violations of women's human rights, including gender-specific abuses. Training for United Nations human rights and humanitarian relief personnel to assist them to recognize and deal with human rights abuses particular to women and to carry out their work without gender bias should be encouraged.

43. The World Conference on Human Rights urges Governments and regional and international organizations to facilitate the access of women to decision-making posts and their greater participation in the decision-making process. It encourages further steps within the United Nations Secretariat to appoint and promote women staff members in accordance with the Charter of the United Nations, and encourages other principal and subsidiary organs of the United Nations to

guarantee the participation of women under conditions of equality.

44. The World Conference on Human Rights welcomes the World Conference on Women to be held in Beijing in 1995 and urges that human rights of women should play an important role in its deliberations, in accordance with the themes of the World Conference on Women of equality, development and peace.

4. The rights of the child

45. The World Conference on Human Rights reiterates the principle of "First Call for Children" and, in this respect, underlines the importance of major national and international efforts, especially those of the United Nations Children's Fund, for promoting respect for the rights of the child to survival, protection, development and participation.

46. Measures should be taken to achieve universal ratification of the Convention on the Rights of the Child by 1995 and the

universal signing of the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, as well as their effective implementation. The World Conference on Human Rights urges States to withdraw reservations to the Convention on the Rights of the Child contrary to the object and purpose of the Convention or otherwise contrary to international treaty law.

47. The World Conference on Human Rights urges all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action. The Conference calls on States to integrate the Convention on the Rights of the Child into their national action plans. By means of these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy

rates and providing access to safe drinking water and to basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally grave problem of children in extreme poverty.

48. The World Conference on Human Rights urges all States, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse.

49. The World Conference on Human Rights supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights

of the girl child. The World Conference on Human Rights urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.

50. The World Conference on Human Rights strongly supports the proposal that the Secretary-General initiate a study into means of improving the protection of children in armed conflicts. Humanitarian norms should be implemented and measures taken in order to protect and facilitate assistance to children in war zones. Measures should include protection for children against indiscriminate use of all weapons of war, especially anti- personnel mines. The need for aftercare and rehabilitation of children traumatized by war must be addressed urgently. The Conference calls on the Committee on the Rights of the Child to study the question of raising the minimum age of recruitment into armed forces.

51. The World Conference on Human Rights recommends that

matters relating to human rights and the situation of children be regularly reviewed and monitored by all relevant organs and mechanisms of the United Nations system and by the supervisory bodies of the specialized agencies in accordance with their mandates.

52. The World Conference on Human Rights recognizes the important role played by non-governmental organizations in the effective implementation of all human rights instruments and, in particular, the Convention on the Rights of the Child.

53. The World Conference on Human Rights recommends that the Committee on the Rights of the Child, with the assistance of the Centre for Human Rights, be enabled expeditiously and effectively to meet its mandate, especially in view of the unprecedented extent of ratification and subsequent submission of country reports.

5. Freedom from torture

54. The World Conference on Human Rights welcomes the

ratification by many Member States of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and encourages its speedy ratification by all other Member States.

55. The World Conference on Human Rights emphasizes that one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities.

56. The World Conference on Human Rights reaffirms that under human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts.

57. The World Conference on Human Rights therefore urges all States to put an immediate end to the practice of torture and eradicate this evil forever through full implementation of the

Universal Declaration of Human Rights as well as the relevant conventions and, where necessary, strengthening of existing mechanisms. The World Conference on Human Rights calls on all States to cooperate fully with the Special Rapporteur on the question of torture in the fulfilment of his mandate.

58. Special attention should be given to ensure universal respect for, and effective implementation of, the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations.

59. The World Conference on Human Rights stresses the importance of further concrete action within the framework of the United Nations with the view to providing assistance to victims of torture and ensure more effective remedies for their physical, psychological and social rehabilitation. Providing the

necessary resources for this purpose should be given high priority, inter alia, by additional contributions to the United Nations Voluntary Fund for the Victims of Torture.

60. States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.

61. The World Conference on Human Rights reaffirms that efforts to eradicate torture should, first and foremost, be concentrated on prevention and, therefore, calls for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, which is intended to establish a preventive system of regular visits to places of detention.

Enforced disappearances

62. The World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the

Protection of All Persons from Enforced Disappearance, calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances. The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators.

6. The rights of the disabled person

63. The World Conference on Human Rights reaffirms that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a

violation of his or her rights. The World Conference on Human Rights calls on Governments, where necessary, to adopt or adjust legislation to assure access to these and other rights for disabled persons.

64. The place of disabled persons is everywhere. Persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society.

65. Recalling the World Programme of Action concerning Disabled Persons, adopted by the General Assembly at its thirty-seventh session, the World Conference on Human Rights calls upon the General Assembly and the Economic and Social Council to adopt the draft standard rules on the equalization of opportunities for persons with disabilities, at their meetings in 1993.

C. Cooperation, development and strengthening of human rights

66. The World Conference on Human Rights recommends that priority be given to national and international action to promote democracy, development and human rights.

67. Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, assistance provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections, is of particular importance. Equally important is the assistance to be given to the strengthening of the rule of law, the promotion of freedom of expression and the administration of justice, and to the real and effective participation of the people in the decision-making processes.

68. The World Conference on Human Rights stresses the need

for the implementation of strengthened advisory services and technical assistance activities by the Centre for Human Rights. The Centre should make available to States upon request assistance on specific human rights issues, including the preparation of reports under human rights treaties as well as for the implementation of coherent and comprehensive plans of action for the promotion and protection of human rights. Strengthening the institutions of human rights and democracy, the legal protection of human rights, training of officials and others, broad-based education and public information aimed at promoting respect for human rights should all be available as components of these programmes.

69. The World Conference on Human Rights strongly recommends that a comprehensive programme be established within the United Nations in order to help States in the task of building and strengthening adequate national structures which have a direct impact on the overall observance of human rights

and the maintenance of the rule of law. Such a programme, to be coordinated by the Centre for Human Rights, should be able to provide, upon the request of the interested Government, technical and financial assistance to national projects in reforming penal and correctional establishments, education and training of lawyers, judges and security forces in human rights, and any other sphere of activity relevant to the good functioning of the rule of law. That programme should make available to States assistance for the implementation of plans of action for the promotion and protection of human rights.

70. The World Conference on Human Rights requests the Secretary-General of the United Nations to submit proposals to the United Nations General Assembly, containing alternatives for the establishment, structure, operational modalities and funding of the proposed programme.

71. The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national

action plan identifying steps whereby that State would improve the promotion and protection of human rights.

72. The World Conference on Human Rights on Human Rights reaffirms that the universal and inalienable right to development, as established in the Declaration on the Right to Development, must be implemented and realized. In this context, the World Conference on Human Rights welcomes the appointment by the Commission on Human Rights of a thematic working group on the right to development and urges that the Working Group, in consultation and cooperation with other organs and agencies of the United Nations system, promptly formulate, for early consideration by the United Nations General Assembly, comprehensive and effective measures to eliminate obstacles to the implementation and realization of the Declaration on the Right to Development and recommending ways and means towards the realization of the right to development by all States.

73. The World Conference on Human Rights recommends that non-governmental and other grass-roots organizations active in development and/or human rights should be enabled to play a major role on the national and international levels in the debate, activities and implementation relating to the right to development and, in cooperation with Governments, in all relevant aspects of development cooperation.

74. The World Conference on Human Rights appeals to Governments, competent agencies and institutions to increase considerably the resources devoted to building well-functioning legal systems able to protect human rights, and to national institutions working in this area. Actors in the field of development cooperation should bear in mind the mutually reinforcing interrelationship between development, democracy and human rights. Cooperation should be based on dialogue and transparency. The World Conference on Human Rights also calls for the establishment of comprehensive programmes,

including resource banks of information and personnel with expertise relating to the strengthening of the rule of law and of democratic institutions.

75. The World Conference on Human Rights encourages the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights.

76. The World Conference on Human Rights recommends that more resources be made available for the strengthening or the establishment of regional arrangements for the promotion and protection of human rights under the programmes of advisory services and technical assistance of the Centre for Human Rights. States are encouraged to request assistance for such purposes as regional and subregional workshops, seminars and information exchanges designed to strengthen regional

arrangements for the promotion and protection of human rights in accord with universal human rights standards as contained in international human rights instruments.

77. The World Conference on Human Rights supports all measures by the United Nations and its relevant specialized agencies to ensure the effective promotion and protection of trade union rights, as stipulated in the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments. It calls on all States to abide fully by their obligations in this regard contained in international instruments.

D. Human rights education

78. The World Conference on Human Rights considers human rights education, training and public information essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.

79. States should strive to eradicate illiteracy and should direct education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The World Conference on Human Rights calls on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.

80. Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.

81. Taking into account the World Plan of Action on Education for Human Rights and Democracy, adopted in March 1993 by the International Congress on Education for Human Rights and Democracy of the United Nations Educational, Scientific and

Cultural Organization, and other human rights instruments, the World Conference on Human Rights recommends that States develop specific programmes and strategies for ensuring the widest human rights education and the dissemination of public information, taking particular account of the human rights needs of women.

82. Governments, with the assistance of intergovernmental organizations, national institutions and non-governmental organizations, should promote an increased awareness of human rights and mutual tolerance. The World Conference on Human Rights underlines the importance of strengthening the World Public Information Campaign for Human Rights carried out by the United Nations. They should initiate and support education in human rights and undertake effective dissemination of public information in this field. The advisory services and technical assistance programmes of the United Nations system should be able to respond immediately to requests from States for

educational and training activities in the field of human rights as well as for special education concerning standards as contained in international human rights instruments and in humanitarian law and their application to special groups such as military forces, law enforcement personnel, police and the health profession. The proclamation of a United Nations decade for human rights education in order to promote, encourage and focus these educational activities should be considered.

E. Implementation and monitoring methods

83. The World Conference on Human Rights urges Governments to incorporate standards as contained in international human rights instruments in domestic legislation and to strengthen national structures, institutions and organs of society which play a role in promoting and safeguarding human rights.

84. The World Conference on Human Rights recommends the strengthening of United Nations activities and programmes to

meet requests for assistance by States which want to establish or strengthen their own national institutions for the promotion and protection of human rights.

85. The World Conference on Human Rights also encourages the strengthening of cooperation between national institutions for the promotion and protection of human rights, particularly through exchanges of information and experience, as well as cooperation with regional organizations and the United Nations.

86. The World Conference on Human Rights strongly recommends in this regard that representatives of national institutions for the promotion and protection of human rights convene periodic meetings under the auspices of the Centre for Human Rights to examine ways and means of improving their mechanisms and sharing experiences.

87. The World Conference on Human Rights recommends to the human rights treaty bodies, to the meetings of chairpersons of

the treaty bodies and to the meetings of States parties that they continue to take steps aimed at coordinating the multiple reporting requirements and guidelines for preparing State reports under the respective human rights conventions and study the suggestion that the submission of one overall report on treaty obligations undertaken by each State would make these procedures more effective and increase their impact.

88. The World Conference on Human Rights recommends that the States parties to international human rights instruments, the General Assembly and the Economic and Social Council should consider studying the existing human rights treaty bodies and the various thematic mechanisms and procedures with a view to promoting greater efficiency and effectiveness through better coordination of the various bodies, mechanisms and procedures, taking into account the need to avoid unnecessary duplication and overlapping of their mandates and tasks.

89. The World Conference on Human Rights recommends

continued work on the improvement of the functioning, including the monitoring tasks, of the treaty bodies, taking into account multiple proposals made in this respect, in particular those made by the treaty bodies themselves and by the meetings of the chairpersons of the treaty bodies. The comprehensive national approach taken by the Committee on the Rights of the Child should also be encouraged.

90. The World Conference on Human Rights recommends that States parties to human rights treaties consider accepting all the available optional communication procedures.

91. The World Conference on Human Rights views with concern the issue of impunity of perpetrators of human rights violations, and supports the efforts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue.

92. The World Conference on Human Rights recommends that

the Commission on Human Rights examine the possibility for better implementation of existing human rights instruments at the international and regional levels and encourages the International Law Commission to continue its work on an international criminal court.

93. The World Conference on Human Rights appeals to States which have not yet done so to accede to the Geneva Conventions of 12 August 1949 and the Protocols thereto, and to take all appropriate national measures, including legislative ones, for their full implementation.

94. The World Conference on Human Rights recommends the speedy completion and adoption of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms.

95. The World Conference on Human Rights underlines the importance of preserving and strengthening the system of special

procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in order to enable them to carry out their mandates in all countries throughout the world, providing them with the necessary human and financial resources. The procedures and mechanisms should be enabled to harmonize and rationalize their work through periodic meetings. All States are asked to cooperate fully with these procedures and mechanisms.

96. The World Conference on Human Rights recommends that the United Nations assume a more active role in the promotion and protection of human rights in ensuring full respect for international humanitarian law in all situations of armed conflict, in accordance with the purposes and principles of the Charter of the United Nations.

97. The World Conference on Human Rights, recognizing the

important role of human rights components in specific arrangements concerning some peace-keeping operations by the United Nations, recommends that the Secretary-General take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mechanisms, in conformity with the Charter of the United Nations.

98. To strengthen the enjoyment of economic, social and cultural rights, additional approaches should be examined, such as a system of indicators to measure progress in the realization of the rights set forth in the International Covenant on Economic, Social and Cultural Rights. There must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.

F. Follow-up to the World Conference on Human Rights

99. The World Conference on Human Rights on Human Rights recommends that the General Assembly, the Commission on Human Rights and other organs and agencies of the United

Nations system related to human rights consider ways and means for the full implementation, without delay, of the recommendations contained in the present Declaration, including the possibility of proclaiming a United Nations decade for human rights. The World Conference on Human Rights further recommends that the Commission on Human Rights annually review the progress towards this end.

100. The World Conference on Human Rights requests the Secretary-General of the United Nations to invite on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights all States, all organs and agencies of the United Nations system related to human rights, to report to him on the progress made in the implementation of the present Declaration and to submit a report to the General Assembly at its fifty-third session, through the Commission on Human Rights and the Economic and Social Council. Likewise, regional and, as appropriate, national human rights institutions, as well as

non-governmental organizations, may present their views to the Secretary-General on the progress made in the implementation of the present Declaration. Special attention should be paid to assessing the progress towards the goal of universal ratification of international human rights treaties and protocols adopted within the framework of the United Nations system.